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Jan. 13. 1879

TRANSCRIPT OF RE-

SUPREME COURT OF THE UNITED STATES.

No. ~~291.~~ 68

THE COUNTY OF CASS, PLAINTIFF IN ERROR,

vs.

SOLOMON L. GILLETT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 25, 1876.

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1 UNITED TATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the November term, 1875, thereof, between S. L. Gillett, plaintiff, and Cass County, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington City on the second Monday of October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable M. R. Waite, Chief Justice of the Supreme Court of the United States, this 26th day of May, in the year of our Lord one thousand eight hundred and seventy-six.

Issued at office in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri,
By , *Deputy.*

Allowed by—

JOHN F. DILLON,
Judge.

2 *Return to writ.*

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name, and affix the seal of said circuit court, at office in the city of Jefferson, this 19th day of July, A. D. 1876.

[SEAL.] H. C. GEISBERG,
Clerk of said Court.

(Indorsed:) No. 283. United States circuit court, western district of Missouri. Cass County, pl'ff in error, vs. S. L. Gillett, def't in error. Writ of error to the circuit court of the United States, western district of Missouri.

3 The United States of America to Solomon L. Gillett, greeting:

You are hereby cited and admonished to be and appear at a

Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the western district of Missouri, wherein the county of Cass, in the State of Missouri, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Arnold Krekel, judge of the circuit court of the United States for western district of Missouri, this 29th day of May, in the year of our Lord one thousand eight hundred and seventy-six.

A. KREKEL, *Judge.*

4 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I hereby acknowledge due service of the within citation, this fifteenth day of June, A. D. 1876.

T. K. SKINKER,
Attorney for Defendant in Error.

(Indorsed:) United States circuit court, western district of Missouri. Solomon L. Gillett, def't in error, vs. County of Cass, pl'ff in error. Citation.

5 UNITED STATES OF AMERICA,
Western District of Missouri, sct:

Pleas before the honorable circuit court of the United States, in and for the western district of Missouri, at the November term thereof, A. D. 1874, in case of—

SOLOMON L. GILLETT, PLAINTIFF,
against
THE COUNTY OF CASS, IN THE STATE OF Missouri, defendant.

Be it remembered that heretofore, to wit, on the 22d day of June, A. D. 1874, there was filed in the clerk's office of said circuit court a petition in words and figures following, to wit:

6 *Petition.*

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

In the circuit court of the United States for said district, November term, 1874.

SOLOMON L. GILLETT, PLAINTIFF,
vs.
CASS COUNTY, DEFENDANT.

The plaintiff, Solomon L. Gillett, a citizen of the State of New York, complains of Cass County, in the State of Missouri, defendant.

7 And for a cause of action, plaintiff states, that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 61. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:

[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached, was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 61.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

8 And for a further cause of action, plaintiff states, that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 61. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents, that the county of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed,

and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached, was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 61.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

9 And for a further cause of action, plaintiff states, that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 62. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents, that the county of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch

railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached, was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 62.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

10 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 62. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the

name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county, at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per cen tum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

The said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached, was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 62.

C. D. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per

centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

11 And for a further action plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond in words and figures following, to wit:

"United States of America. $1,000. County bond No. 63. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name thereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. A. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock

of said railroad company in the name and for the use and benefit of said branch railroad, and that said branch railroad had been before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 63.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

12 And for a further cause of action plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 63. County of Cass. State of Missouir. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county, at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st day of August, and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the County court of Cass County, under the order of said court, signing his name hereto,

and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached, was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 63.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

13 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 64. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the

National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually, on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of the said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:

[SEAL OF CASS COUNTY COURT.[C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was, under the order of the county court of said county, signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870 established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 64.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum, with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

14 And for a further cause of action, plaintiff states, that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 64. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises to pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon, from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually, on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and an act of the generally assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond, by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.
Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was, under the order of the county court of said county, signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars, on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 64.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum, with interest at the rate of seven per cent. per annum, from maturity of said coupon, and for costs.

15 And for a further cause of action the plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 65. County of Cass, State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit, and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county, at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually, on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said County of Cass has executed this bond, by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and the clerk of said court, under the order thereof, attesting the same by

and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:

[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was, under the order of the county court of said county, signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June. 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars, on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 65.

C. H. DORE,
Clerk of Cass County Court, Missouri."

The said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum, with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

16 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 65. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five

years after the date thereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually, on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said county of Cass has executed this bond, by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, County of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was, under the order of the county court of said county, signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars, on the first day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 65.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum, with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

17 And for a further cause of action plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 66. County of Cass, State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually, on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Misssouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said County of Cass has executed this bond, by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was, under the order of the county court of said county, signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars, on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interterest on bond No. 66.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum, with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

18 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st nay of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 66. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually, on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond, by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was, under the order of the county court of said county, signed by said Jehiel Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts

of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars, on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 66.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum, with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

19 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 67. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company ,or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually, on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said County of Cass has executed this bond, by

the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was, under the order of the county court of said county, signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 67.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum, with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

20 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed his certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 67. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises to pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at

the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually, on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said County of Cass has executed this bond, by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was, under the order of the county court of said county, signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars, on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 67.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum, with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

21 And for a further cause of action, plaintiff states, that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 253. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County Missouri."

That said bond was, under the order of the county court of said county, signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri, therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay

to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 253.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum, with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

22 And for a further cause of action, plaintiff states that heretofore, to wit: On the 1st day of February, A. D. 1871, the defendant executed its certain bond in words and figures following, to wit:

"United States of America. $1,000. County bond No. 253. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the County court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county, signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 253.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

23 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 254. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to

incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the Couny Count of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the Count Courty of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached, was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 254.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

24 And for a further cause of action, plaintiff states, that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 254. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo

and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached, was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 254.

C. H. DORE.
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st

day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

25 And for a further cause of action, plaintiff states that heretofore, to wit, on 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 255. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was, under the order of the county court of said county, signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said

railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi annual interest on bond No. 255.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

26 And for a further cause of action plaintiff states that heretofore. to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond in words and figures following, to wit:

"United States of America. $1,000. County bond No. 255. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosha Railroad, in the sum of one thousand dollars, which sum the said County, for value received, hereby promises pay to the Tebo and Neosha Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under

the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been before that time, to wit, on the 5th day of June, 1870, established by resolution of the board of directors of said company; that among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 255.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

27 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 256. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New

York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:

[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jeheil C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 256.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

28 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 256. County of Cass. State of Missouri. Interest ten per cent. per annum payable on the 1st days of August and February in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri, approved March 21st, A. D., 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.
Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The County of Cass acknowledges itself to owe and promises to pay to

the bearer fifty dollars on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 256.

C. H. DORE,
Clerk of Cass County Court, Missouri."

The said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

29 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 257. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents, that the county of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said county of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.
Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached, was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The county of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 257.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

30 And for a further cause of action plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $10,000. County bond No. 257. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents that the county of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the

State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said county of Cass has executed this bond by the presiding justice of the county court of Cass county, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri."

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The county of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 257.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon, and for costs.

31 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 290. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State

of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February, of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said county of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was, under the order of the county court of said county' signed by said Jehiel C. Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch railroad, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50.

The county of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of August, 1873, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 290.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per

centum per annum; that at the maturity thereof, to wit, on the 1st day of August, 1873, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

32 And for a further cause of action, plaintiff states that heretofore, to wit, on the 1st day of February, A. D. 1871, the defendant executed its certain bond, in words and figures following, to wit:

"United States of America. $1,000. County bond No. 296. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court of the county of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof the said county of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,
Presiding Justice of the County Court of Cass County, Missouri.

Attest:
[SEAL OF CASS COUNTY COURT.] C. H. DORE,
Clerk of the County Court of Cass County, Missouri."

That said bond was under the order of the county court of said county signed by said Jehiel Stevenson, presiding justice thereof, and attested by C. H. Dore, clerk thereof, with the seal of said court affixed, and was issued in pursuance of said order, and by authority of the several acts of the general assembly of the State of Missouri therein named, to pay a subscription then and there made to the capital stock of said railroad company, in the name and for the use and benefit of said branch rail-

road, and that said branch railroad had been, before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company. That among the coupons of interest to said bond attached was one in words and figures following:

"$50.] Harrisonville, Cass County, Missouri, February 1st, 1871. [$50

The county of Cass acknowledges itself to owe and promises to pay to the bearer fifty dollars on the 1st day of February, 1874, at the National Park Bank, in the city and State of New York, being semi-annual interest on bond No. 290.

C. H. DORE,
Clerk of Cass County Court, Missouri."

That said coupon is payable in the State of New York, and by the laws of that State bears interest after maturity at the rate of seven per centum per annum; that at the maturity thereof, to wit, on the 1st day of February, 1874, plaintiff was the bearer and true and lawful holder thereof; that said coupon is due, and that the said sum of fifty dollars is wholly unpaid.

Wherefore plaintiff prays judgment for said sum with interest at the rate of seven per cent. per annum from maturity of said coupon and for costs.

T. K. SKINKER,
Att'y for Plff.

33 And thereupon, on the 2d day of July, A. D. 1874, there was issued out of said clerk's office, a summons in words and figures following, to wit:

Summons.

WESTERN DISTRICT OF MISSOURI, *sct:*

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon Cass County, in the State of Missouri, a citizen of said district, that it be and appear before the honorable circuit court of the United States for the western district of Missouri, on the first day of the next term thereof, to be holden at the city of Jefferson, in and for said district, on the 16th of June (November) next, then and there to answer the complaint of Saloman L. Gillett, citizen of the State of New York, as set forth in the petition filed in said court on the 22d day of June, A. D. eighteen hundred and seventy-four.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 2d day of July, A. D. eighteen hundred and seventy-four. Issued at office, in the city of Jefferson, under the seal of said circuit court the day and year last aforesaid.

[SEAL.] M. M. PRICE,
Clerk of said Court,
By C. M. WARD, *D. C.*

34 Upon said summons the marshal of the United States for said district made the following return, to wit:

Marshal's return.

I hereby certify that I executed this writ by delivering to C. H. Dore, county clerk of the county of Cass, in the western district of Missouri, at his office, in Harrisonville, Mo., a true copy of the within summons, together with a copy of the petition filed in this cause, on the 9th day of July, 1874.

GEO. SMITH,
U. S. Marshal,
By SAM'L O. TENNY,
Deputy.

And afterward, at a regular stated term of the said circuit court of the United States, in and for the western district of Missouri, begun and held at the city of Jefferson, in said district, on the third Monday, being the 16th day of November, A. D. 1874, the following proceedings were had in this case on the 17th day of November, in said last-mentioned year, to wit:

SOLOMAN L. GILLETT *vs.* CASS COUNTY. } No. 283. Interest on bonds.

Now comes the defendant, by its attorneys, Phillips & Vest,
35 and file answer to the petition herein; which said answer is in words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA,
Western District of Missouri:

In the circuit court of the United States for said district.

SOLOMAN L. GILLETT, PLAINTIFF, *against* CASS COUNTY, DEFENDANT.

Now at this day comes the defendant, and for answer to plaintiff's petition denies that on the 1st day of February, 1871, or at any other time, it executed its certain bond, in words and figures as set out in the petition.

Defendant denies that said bond was issued in pursuance of or by authority of the several acts of the general assembly of the State of Missouri therein named, or that the branch road therein mentioned had been before that time, to wit, on the 6th day of June, 1870, established by resolution of the board of directors of said company.

Defendant, further answering, says that whether or not by the laws of the State of New York said coupons bear interest after matur-
36 ity at the rate of seven per centum per annum, or whether at the maturity thereof plaintiff was the bearer and true and lawful holder thereof, this defendant has no knowledge or information thereof sufficient to form a belief.

And defendant, further answering to all and each of the counts in said petition, says it cannot deny that Jehiel C. Stevenson, as presiding justice, and C. H. Dore, as clerk of said county court, made the bonds and coupons mentioned in the petition, but defendant avers that neither

the said Stevenson nor Dore had authority to make said obligatory writing, or to bind this defendant thereby; that defendant is a county created by statutory enactment in the State of Missouri, and it never authorized the said Stevenson and Dore, or either of them, to make and issue said bonds and coupons.

Defendant states the facts of this whole matter to be, that heretofore. to wit, in 1870, certain scheming speculators conceived the project of starting the construction of a railroad hitherto known or denominated as the Kansas City and Memphis Railroad, to begin at the city of Kansas, in the State of Missouri, and to run in a southeasterly direc-
37 tion through the said county of Cass, to the city of Memphis, in the State of Tennessee.

These persons being wholly dependent for the prosecution of said enterprise upon aid and money to be obtained from the counties along the line of the route of said road, and to avoid the provisions of the 14th section of the 11th article of the constitution of the State of Missouri, which prohibited the said county from becoming a stockholder, or loaning its credit to any company, association, or corporation, unless two-thirds of the qualified voters of such county at a regular or special election held thereon should assent thereto, conceived the subterfuge of denominating this road a branch of the Tebo and Neosho Railroad, a corporation created by act of the legislature of the State of Missouri, approved January 16th, 1860, so as to enable them by fraud and adroit management to obtain from the said county of Cass and other counties on the route of said projected road subscriptions to aid in said enterprise without first obtaining the assent thereto of two-thirds of the qualified voters of the county, as by the said constitution then was and now is required.

38 Accordingly they designated that part of the road east of the town of Clinton, in the county of Henry, in the State of Missouri, as "the Clinton and Memphis Branch of the Tebo and Neosho Railroad," and that part west between said town of Clinton and Kansas City as "the Clinton and Kansas City Branch of the Tebo and Neosho Railroad," assuming and asserting that said branches so called were established pursuant to and by authority of "An act to aid in the building of branch railroads in the State of Missouri," approved March 21st, 1868, by the legislature of the State of Missouri.

Defendant alleges that the then directory of the said Tebo and Neosho Railroad Company had knowledge of and connived at said fraudulent scheme and design upon the said counties, but with the distinct assurance and understanding between them that the object of said speculators was as hereinbefore alleged to obtain subscriptions from said counties under the cloak of the privileges secured by the charter of the said Tebo and Neosho Railroad without having first to obtain the consent of the qualified voters of said counties; and also that said
39 projected road was not in fact to be a branch of said Tebo and Neosho Railroad, but was in fact (as it is in law) to be entirely seperate from and independent of the same, its stock to be seperate, as also its assets, profits, property, manag'ment, and control. And defendant avers that said Tebo and Neosho Railroad Company in fact have done nothing more, or any other act looking to the recognition or establishment of said branch roads.

And defendant says that the said Tebo and Neosho Railroad Company, pursuant to the statute of the State of Missouri in such case made and provided, by sale and indenture, did, on the day of October, 1870, sell and transfer all its rights, franchises, and property to the

Missouri, Kansas and Texas Railway Company, a corporation organized and existing under the laws of the State of Kansas, which sale was duly ratified and accepted by the said Missouri, Kansas and Pacific Railway Company and consented to by the stockholders in the said Tebo and Neosho Railroad, and was duly filed in the office of the secretary of state on the 4th day of January, 1871, as by law provided.

40 Defendant says that thereafter the said Tebo and Neosho Railroad Company ceased to exist as such, and the authority of said speculators, if any authority ever existed, claiming to act for and on behalf of such branches, so far at least as such authority was or could be claimed to emanate from the Tebo and Neosho Railroad Company, was revoked and annulled.

Yet defendant says that said speculators afterwards, to wit, on the day of February, 1871, in furtherance of their said fraudulent schemes and purpose, without any knowledge or authority from said Tebo and Neosho Railroad Company, and without the knowledge, consent, or authority, or sanction in fact or law of the said Missouri, Kansas and Texas Railway Company, procured from the county court of said Cass County the following order of record in said court, to wit:

"In the matter of the application of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad for a subscription by and from the county of Cass to aid in the construction of the said branch railroad, the same being a part of the great through line of railroad from

41 Kansas City to Memphis, in the State of Tennessee:

"The application having been duly considered, and the court, being duly satisfied that the resources of the county will be materially enlarged, and additional and profitable markets be opened to the people of the county, &c., it is ordered, declared, and adjudged by the county court of Cass County in the State of Missouri, do subscribe for and agree to take three thousand shares of the capital stock of the Tebo and Neosho Railroad Company (now in part the Missouri, Kansas and Texas Railway Company), in the name of, and for the use and benefit of, the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, and to aid in the construction thereof, each share being of the denomination of one hundred dollars, and amounting in the aggregate to three hundred thousand dollars, under and by virtue of the authority in the charter of the Tebo and Neosho Railroad contained, and under the act of the general assembly of the State of Missouri entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, 1868, and in accordance with the resolution and order of the board of

42 directors of said Tebo and Neosho Railroad Company establishing said branch railroad, and authorizing subscriptions to said capital stock to aid in the construction thereof, adopted on the 6th day of June, 1870.

"The said stock to be paid for by the issue and delivery to the committee appointed to construct said branch railroad, or to their successors in office of the coupon bonds of the county of Cass of the denomination of one thousand dollars each, bearing date 1st day of February, 1871, with the interest of ten per cent. per annum payable semi-annually at the National Park Bank in the city of New York, at which place the principal of said bonds shall also be payable, twenty years after the date thereof, redeemable, however, at the option of the county court at any time after the lapse of five years after the date thereof.

"The said bonds to be signed by the presiding justice of this court, and attested by the clerk of the court under the seal thereof, and the

coupons to be signed by said clerk, or to have the fac simile of said signatures lithographed or engraved thereon, and when so signed, ten thousand dollars of said bonds shall be paid over to said committee-
43 -and the remainder shall be deposited in said National Park Bank in escrow, subject to be drawn therefrom in accordance with the provisions of this order hereinafter contained."

Defendant says that the said subscription was made upon the express conditions, among other, as shown by the said record, and as a part of the said order that the said proceeds of said bonds should be applied to and expended in the construction of said branch road in the county of Cass; and that none of said bonds in excess of ten thousand dollars for engineering purposes should be delivered as aforesaid, until certain work was performed, and contracts made as therein specified, and then said order contains this express condition and stipulation, to wit: "When any or all of said bonds become due and deliverable according to the terms of said conditions," the presiding justice of this (said) court under the order and direction of the court should so certify to said National Park Bank, and upon receipt thereof said bank shall be authorized and required to pay over and deliver to said construction committee or its duly authorized agent such sum and amounts of said bonds
44 as in such certificate or certificates shall be designated, first cutting therefrom all coupons of interest which shall have matured, and further ordering that all the coupons of interest which had accrued prior to the date of the delivery of said bonds as above provided should be returned to the court and destroyed.

Defendant says the foregoing order is the only one ever made by said county court of Cass County making subscription to or directing the issue of any bonds to or for the use of said Tebo and Neosho Railroad, or said branch, and the same is the order referred to, and named on the face of the bonds in question in this suit.

Defendant says that said subscription was so made as aforesaid, without the knowledge or solicitation of said Missouri, Kansas and Texas Railway Company, that said company has never accepted or in any manner or way recognized the same, nor has it ever directly or indirectly received the bonds issued thereon, or their proceeds, nor was the same made to said company in fact or in law, nor has said Missouri, Kansas and Texas Railway Company ever authorized in any manner the formation of said so-called branch roads, or had anything whatever to do with it or its management, but the same is and has ever been wholly
45 independent of it; nor has said county ever received, nor is she entitled to receive, any certificate of stock either from said Missouri, Kansas and Texas Railway Company or said Tebo and Neosho Railroad Company.

And defendant says that even if said subscription, as it purports on its face to have been made, was made under said act of the legislature of the State of Missouri, approved March 21, 1868, said county court had no authority in law to make such subscription or issue such bonds without first having obtained the assent thereto of the qualified voters of the county of Cass, as in such case provided and required by the said 14th section of the 11th article of the constitution of the State of Missouri.

And defendant alleges the fact to be that the assent of the said voters was not so obtained thereto; that no election therefor either general or special was ever ordered or held in said county prior or subsequent to the making of said subscription, nor do the records of said county court show that any such election was ever held or ordered.

And defendant alleges further that after the said bonds were issued by said court, the same were so placed in escrow at said National Park Bank, where the same of right and in law should now be; that
46 the presiding justice of said county court never in fact did certify as by the conditions of said order of subscription required, under the order of said county court to said National Park Bank, that said bonds had become deliverable as aforesaid; and defendant says that if in fact the said plaintiff is the bearer of said bonds and coupons, or any of them, as alleged in his petition, he has no right or title thereto which he can assert as against this defendant.

Defendant, further answering, says that on or about the 7th day of August, 1871, citizen tax payers of said county brought their action against Jehiel C. Stevenson and his associate justices of the said county court, which said action is entitled "William Stephens, David Humphrey, William Jones, Wm. H. Cundiff, and Wiley Bailey, plaintiffs, against J. C. Stevenson, James Copeland, and Robert Forsyth, defendants," in which the petition, among other things, alleged substantially the facts hereinbefore stated, and charging a fraudulent combination between and purpose on the part of said defendants, as justices of said court, and said speculators, to issue and have delivered over said
47 bonds fraudulently and for their own aggrandizement, and praying that said defendants and their successors in office be enjoined from doing any further act or thing whatever looking toward the delivery of such bonds, and to enjoin the said court from ordering and the presiding justice thereof from making a certificate as aforesaid to said National Park Bank, authorizing it to deliver over said bonds, and to enjoin them and their successors from making any assessment, or collecting any tax for the payment of either the principal or interest of said bonds, or from funding the same.

Defendant alleges that said petition was duly presented to the judge of the 6th judicial circuit of the State of Missouri, in which defendant then resided, and in which said Cass County was situated, said judge having full jurisdiction over the parties and the subject-matter, who, on or about the 9th day of August, 1871, issued a temporary writ of injunction, therein enjoining defendants as prayed for, making said writ returnable to the 1st day of the next term of the circuit court of the county of Cass; said circuit court having full jurisdiction thereof, which said writ was duly served on the defendants on the 10th day of August, 1871.

48 Defendant says that on the return day of said writ, the plaintiff and defendants appeared in said return court, the plaintiffs filed their amended petition thereon and defendants took leave to file answer, and on their application the cause was sent on change of venue to the circuit court in and for the county of Jackson, in the State of Missouri, said court having complete jurisdiction of the subject-matter and the parties, where said cause afterwards in court in course coming on for final trial, the same was heard by the court, and said injunction was made perpetual, enjoining said justice and their successors as prayed for; which said degree remains in full force, unappealed from and unreversed.

Of all which matter and facts alleged, as aforesaid, the plaintiff at the time of becoming the bearer of said bonds and coupons had notice, and is bound and affected thereby:

Whereupon defendant prays judgment that the plaintiff take nothing by his said petition, that the defendant go hence without day with his costs, and for all proper relief.

49 And afterward, at said last mentioned day, the following further proceedings were had in this case, to wit:

SOLOMON L. GILLETT
vs.
CASS COUNTY. } No. 283.

This day comes the plaintiff by his attorney, T. K. Skinker, and the defendant by Philips & Vest, and file stipulation, whereby it is agreed that the answer filed herein shall apply to and be regarded as made in the cases of Wm. H. Forsyth vs. Cass County, and Illustrious Remington vs. Cass County, and that the said cases should abide the judgment in the above cause.

And afterward, at said last mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 18th day of November, A. D. 1874, to wit:

SOLOMON L. GILLETT
vs.
CASS COUNTY. } No. 283.

Now comes the defendant, by Philips & Vest, its attorneys, and files motion to suppress the deposition of the plaintiff herein;
50 which said motion is in words and figures following, to wit:

Motion to suppress deposition.

In the circuit court of the United States for the western district of Missouri.

SOLOMON L. GILLETT, PLAINTIFF,
against
CASS COUNTY, DEFENDANT. }

Now on this day comes the defendant and moves the court to suppress the deposition of said Solomon L. Gillett, filed herein on the 22d day of August, 22, 1874, for the following reasons:

Because there is no certificate to said depositions as by law required; nor was there any sufficient notice given to defendant as to the time and place of taking the same; nor was the same directed to the court where the same was made returnable.

PHILIPS & VEST,
Att'ys for Def't.

And afterward, at said last mentioned day, the following further proceedings were had in this case, to wit:

SOLOMON L. GILLETT
vs.
CASS COUNTY. } No. 283.

51 Now comes the plaintiff, by his attorney, T. K. Skinker, and files replication to the answer herein; which said replication is in words and figures following, to wit:

Replication.

SOLOMON L. GILLETT
vs.
CASS COUNTY.

Now comes the plaintiff, and for reply says that he does not know and has not sufficient knowledge or information to form a belief whether or not scheming speculators conceived the project of starting the construction of a railroad, as alleged, or whether or not they were dependent for the prosecution of said enterprize upon aid & money to be obtained from the counties along the line of said road; or whether to avoid the provisions of the 14th section of the 11th article of the constitution of Missouri they conceived the subterfuge of denominating said road a branch of the Tebo & Neosho, so as to enable them to obtain subscriptions from said counties in the manner alleged; or
52 for what purpose a part of said road was designated as the Clinton & Memphis Branch of the Tebo & Neosho Railroad, and a part of the Clinton & Kansas City Branch of the Tebo & Neosho Railroad; or whether or not the then directory of the Tebo & Neosho Railroad Company knew of or connived at any such fraudulent scheme as alleged; or what assurance or understanding existed between the said directors & the said speculators; or whether the said Tebo & Neosho Railroad Company have done any other act looking to the recognition of said branch road, except as alleged in the petition, or whether or not the said railroad company did at any time sell and transfer its rights, franchises & property to the said Missouri, Kansas & Texas Railroad Company, or whether any evidence of such sale was filed in the office of the secretary of state as alleged; or whether or not said railroad company has at any time ceased to exist; or whether or not the order set out in the answer was procured from the county court in pursuance of their said alleged fraudulent schemes by the said speculators;
53 or whether or not the said bonds were placed in escrow at said National Park Bank; or whether or not the said presiding justice ever did give the said certificate.

And plaintiff denies that at the time of becoming the bearer of said bonds & coupons he had notice of any of the pretended frauds, speculations, unlawful contrivances, irregularities, or defences whatever, set up in the answer. But on the contrary he avers that he purchased the said bonds & coupons for a valuable consideration in money, and believing them to have been lawfully and regularly issued, and without any knowledge whatever of any of the said several matters of defense.

T. K. SKINKER,
For Pl'ff.

And afterward, at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in this case, on the 20th day of November, A. D. 1874, to wit:

SOLOMON L. GILLETT
vs.
CASS COUNTY. } No. 283.

Now comes the defendant, by Philips & Vest, its attorneys, and
54 by leave of court withdraws the motion to suppress deposition of plaintiff, and it is now ordered that this cause be continued.

And afterward, at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in this case, on the 21st day of November, A. D. 1874, to wit:

SOLOMON L. GILLETT
vs.
CASS COUNTY. } No. 283.

Now come the said parties, by their attorneys, and file stipulation amending petition, and making deposition of plaintiff applicable to same; which said stipulation is in words and figures following, to wit:

Stipulation to amend petition.

SOLOMON L. GILLETT
vs.
CASS COUNTY. } 283.

It is agreed between the parties hereto that plaintiff may file in this case the coupons of the several bonds recited in the petition, which coupons express to be from bonds numbered 61, 62, 63, 64, 65, 66,
55 67, 253, 254, 255, 256, 257, 290, and to be due August 1st, 1872, February 1st, 1873, August 1st, 1874, & February 1st, 1875, and that the petition shall be treated as embracing counts on each of said several coupons, and that the deposition of Solomon L. Gillett, on file herein, shall be read as applicable to said several coupons; and also that the paper hereto annexed shall be read as the deposition of R. W. Forsyth, and that the stipulations filed in this cause at this term shall apply to this additional stipulation.

PHILIPS & VEST,
Att'ys for Def't.
T. K. SKINKER,
For Plaintiff.

And afterward, at the regular stated term of said circuit court, begun and held on the third Monday of April, A. D. 1875, at the place aforesaid, the following further proceedings were had in this case, on the 27th day of April, A. D. 1875, to wit:

Trial.

SOLOMON L. GILLETT
vs.
CASS COUNTY. } 283.

56 This day come the parties, by their attorneys, the plaintiff by Thomas K. Skinker, and the defendant by Philips & Vest, and this case being called for trial, an agreement in writing waiving a jury having been this day filed, this case was tried by the court sitting as a jury, and was argued by counsel and submitted upon the pleadings and proof; and it is further ordered that the plaintiff file his brief on or before the first day of July next, defendant on or before the first day of August next, and a copy of each brief to be served on the opposite attorney; which said waiver of jury is in words and figures following, to wit:

Jury waiver.

GILLETT
vs.
CASS CO.

Jury waived.

T. K. SKINKER,
Att'y for Pl't'ff.
PHILIPS & VEST,
For Def't.

And afterward, at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in this case, on the 28th day of April, 1875, to wit:

57 SOLOMON L. GILLETT
vs.
CASS COUNTY. } 283.

This day comes the plaintiff by attorney, and files a stipulation signed by counsel, that plaintiff may amend his petition by filing additional counts thereto, and the coupons referred to in said counts; which said stipulation is in words and figures following, to wit:

Stipulation to file add. counts.

In the circuit court of the United States for the western district of Missouri.

S. L. GILLETT, PL'T'F,
vs.
CASS COUNTY, DEF'T.

It is hereby agreed and stipulated by and between the said pl't'ff and def't, that the pl't'ff shall before final judgment herein add other coupons to the petition sufficient to increase the amount of the judgment to five thousand dollars. $5,000.00.

PHILIPS & VEST,
Att'ys for Def't.
T. K. SKINKER,
Att'y for Plaintiff.

58 And afterward, at the regular stated term of said circuit court, begun and held on the third Monday of November, A. D. 1875, at the place aforesaid, the following further proceedings were had in this case, on the 10th day of December, A. D. 1875, to wit:

Trial & judgment.

SOLOMON L. GILLETT
vs.
CASS COUNTY. } 283.

This day come the parties, by their attorneys, the plaintiff by Thomas K. Skinker, esqr., and the defendant by John F. Philips, esqr. And in

accordance with stipulation of parties heretofore filed, and by leave of court the plaintiff amends his petition, by adding new causes of action thereto, and also files additional coupons herein. And this case being regularly called for trial and a stipulation of parties waiving a jury having been heretofore filed, the case is argued by counsel and submitted to the court upon the pleadings, stipulations and proofs; upon consideration whereof, and the court being fully advised in the premises, the court finds that the defendant is indebted to the plaintiff, by reason
59 of the non-payment of the coupons or interest warrants, in the petition described in the sum of seven thousand one hundred and three dollars and twenty-five cents ($7,103.25), it is therefore considered by the court, that the plaintiff, Solomon L. Gillett, recover against the defendant, the County of Cass, in the State of Missouri, the sum of seven thousand one hundred and three dollars and twenty-five cents ($7,103.25), the amount so as aforesaid found to be due, together with his costs herein expended, and that execution issue therefore. And upon motion, leave is granted to the defendant to prepare and present to the court a special finding of the facts herein, at or before the next term of this court.

And the said additional counts to plaintiff's petition is in words and figures following, to wit:

Additional causes of action.

S. L. GILLETT }
vs.
CASS COUNTY. }

In accordance with the stipulation heretofore filed fifty addi-
60 tional coupons are this day filed by the plaintiff as causes of action, and the petition is amended so as to include the same. Said coupons are as follows: Coupons due Aug. 1, 1872, on bonds No. 101, 289, two coupons; coupons due Feb'ry 1, 1873, on bonds No. 44, 101, 289, 3 coupons; coupons due Aug. 1, 1873, on bonds No. 31, 43, 44, 48, 207, 5 coupons; coupons due on *on* the 1st Feb'ry, 1874, on bonds No. 1, 2, 3, 4, 5, 31, 43, 44, 48, 207, 10 coupons; coupons due Aug. 1, 1874, on bonds No. 1, 2, 3, 4, 5, 31, 43, 44, 48, 207, 10 coupons; coupons due Feb'ry 1, 1875, on bonds No. 2, 3, 31, 43, 44, 48, 207, 7 coupons; coupons due Aug. 1, 1875, on bonds No. 61, 62, 63, 64, 65, 66, 67, 253, 254, 255, 256, 257, 290, 13 coupons.

T. K. SKINKER,
Att'y for Plaintiff.

And afterward, on the 20th day of May, A. D. 1876, it being in vacation of said circuit court, the following proceedings were had in this case, to wit:

SOLOMON L. GILLETT }
vs. } 283.
CASS COUNTY. }

61 This day comes the defendant, by James O. Broadhead, esqr., its attorney, and files herein a special finding of facts and also a bill of exceptions, duly allowed and signed by the honorable John F. Dillon, judge; which said special finding is in words and figures following, to wit:

Special finding.

In the United States circuit court for the western district of Missouri.
November term, 1875.

S. L. GILLETT, PL'FF,
vs.
CASS COUNTY, DEF'T.

The above-entitled cause came on to be heard on the 10th day of December, A. D. 1875, and a jury having been waived, the court, upon the trial of the cause, found the following facts to be true:

1. That the plaintiff, at the time of the institution of the suit, was the innocent holder for value of the coupons sued on, which, with the legal interest thereon, amount at the date of this finding to the sum of $7,103.25.

2. That the said coupons were attached to the bonds purporting to have been issued by the County of Cass, dated Febr. 1st,
62 1871, and payable Febr. 1st, 1891, and that said bonds are correctly set forth in the petition of plaintiff in this cause, and were signed by Jehiel C. Stevenson, who was the presiding justice of the said county court, and attested by C. H. Dore, clerk, and are under the seal of the county court.

3. That on the 28th of February, 1871, the order, a copy of which is hereto attached and marked Exhibit A, was made by the county court of Cass County, under which order the subscription was made and the bonds issued.

Said Exhibit A is as follows, to wit:

STATE OF MISSOURI,
County of Cass, ss:

Be it remembered that at a regular term of the county court within and for the county and State aforesaid, begun and held at the court-house in Harrisonville, in said county, on the third Monday in February, A. D. 1871, and on the eighth day of said term, it being the 28th day of said month, among other proceedings, the following was had and entered of record in said court, to wit:

63 In the matter of the application of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad for a subscription by and from the County of Cass to aid in the construction of said branch railroad, the same being a part of the great through line of railroad from Kansas City to Memphis, in the State of Tennessee.

The application having been duly considered, and the court being fully satisfied that the resources of the county will be materially enlarged and additional and profitable markets will be opened to the people of the county by the construction of said line of railroad through the limits of the county of Cass, it is ordered, ordained, and adjudged by the county court that the County of Cass, in the State of Missouri, do subscribe for and agree to take three thousand shares of the capital stock of the Tebo and Neosho Railroad Company (now in part the Missouri, Kansas and Texas Railway Campany), in the name of and for the use and benefit of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, and to aid in the construction thereof, each share being of the denom-
64 ination of one hundred dollars, and amounting in the aggregate to the sum of three hundred thousand dollars, under and by vir-

tue of the authority in the charter of the Tebo and Neosho Railroad Company contained, and under the act of the general assembly of the State of Missouri, entitled "An act to aid the building of branch railroads in the State of Missouri," approved March 21st, 1868, and in accordance with the resolutions and orders of the board of directors of said Tebo and Neosho Railroad Company establishing said branch railroad and authorizing subscriptions to said capital stock to aid in the construction thereof, adopted on the sixth day of June, 1870; the said stock to be paid for by the issue and delivery to the committee appointed to construct said branch railroad, or to their successors in office, of the coupon bonds of the County of Cass of the denomination of one thousand dollars each, bearing date the first day of February, 1871, with interest at the rate of ten per cent. per annum, payable semi-annually, at the National Park Bank, in the city of New York, at which place
65 the principal of said bonds shall also be payable twenty years after the date thereof, redeemable, however, at the option of the county court at any time after the lapse of five years after the date thereof, the said bonds to be signed by the presiding justice of this court and attested by the clerk of the court, under the seal thereof, and the coupons to be signed by said clerk or to have the fac-simile signature of said clerk lithographed or engraved thereon, and when so signed ten thousand dollars of said bonds shall be paid over to said committee and the remainder shall be deposited in the said National Park Bank in escro', subject to be drawn therefrom only in accordance with the provisions of this order hereinafter contained; the said subscription being made, however, upon the following express terms and conditions, that is to say:

First. That the said branch railroad shall be located upon the most practicable route through the county of Cass, and through the corporate limits of Harrisonville as nearly central as the route of the road
66 in the general direction of Kansas City from Clinton and the nature of the ground and economy of construction will permit, and that a depot shall be established and maintained at a point on the line of said railroad as near the town of Harrisonville and as convenient to the depot of the Missouri, Kansas, Texas Railway as ease and practicability of access thereto and egress therefrom and the successfull and safe operation of said railroad thereat will permit, provided the town of Harrisonville or the citizens thereof shall furnish said company free of charge the right of way through the corporate limits of said town.

Second. That the proceeds of said bonds shall be applied to and expended in the construction of said branch railroad within the limits of the County of Cass.

Third. That none of said bonds in excess of ten thousand dollars for engineering expenses shall be deliverable as aforesaid until the graduation upon the line of said branch railroad has been commenced in good faith either within the limits of Jackson County or Henry County
67 and the graduation and masonry thereon within the limits of Cass County has been in whole or in part let to contract to responsible parties of whose responsibility the court shall be reasonable satisfied, and thereupon there shall be due and deliverable as aforesaid such an amount of said bonds as the number of miles let to contract for the graduation and masonry within the limits of Cass bears to the whole number of miles of the line of said road within the county. When any or all of said bonds become due and deliverable, according to the terms aforesaid, the presiding justice of this court, under the order and direction of the court, shall certify the same to said National Park Bank, and

upon the receipt thereof said bank shall be authorized and required to deliver and pay over to said construction committee or its duly authorized agent such sum and amount of said bonds as in said certificate or certificates shall be designated, first cutting therefrom all the coupons of interest which shall have matured.

Fourth. That all the coupons of interest which shall have fully
68 matured prior to the date at which said bonds shall be due and deliverable as aforesaid shall, upon the delivery of said bonds as aforesaid, be cut off and returned to the county treasurer and destroyed in the presence of the court.

Ordered further, that Richard O. Borgess be, and he is hereby, appointed the agent of the County of Cass to subscribe for the capital stock aforesaid in accordance with the terms of the foregoing order, and that he cause the said bonds to be prepared and lithographed, and that they be signed and disposed of only as aforesaid.

Judge Copeland dissenting.

STATE OF MISSOURI,
County of Cass, ss:

I, Chas. H. Dore, clerk of the county court within and for the county and State aforesaid, hereby certify that the above and foregoing is a full, true, and perfect copy of the order of subscription made in said behalf, as fully as the same is of record in book F, at page 629, one of the records of said court.

69 Witness Chas. H. Dore, clerk of said court, with the seal thereof hereto affixed, at office in Harrisonville, in said county, this 7th day of April, A. D. 1873.

[SEAL.] C. H. DORE, *Clerk.*

That the bonds were *were* signed by the officers of the county at the dwelling house of J. D. Hines, an attorney at law, residing at the county seat of the county, and a partner of Cline, the county attorney; that the presiding justice of the county court, Jehiel Stevenson, proposed that the bonds should be signed there, on the ground that there was considerable excitement and opposition among the people to the issue of the bonds. The residence of Hines was ¼ of a mile from the clerk's office.

That on the 16th of March, 1871, a remonstrance against the subscription and the issue of the bonds, numerously signed by citizens and taxpayers of Cass County, was presented to the county court and filed among the records; that several other petitions of the same kind were also presented to the court during the same term and long before
70 the bonds in question were ever issued or delivered to any one.

That the bonds were never in fact issued until about the middle of August, 1871, at which time only $10,000 of the bonds were issued.

That on the 9th of August, 1871, a temporary injunction was granted by the judge of the 6th judicial circuit of the State of Missouri against the issue of the bonds, which court was a court of competent jurisdiction in such matters, which injunction was afterwards made perpetual.

The parties to said suit were as follows:

That the National Park Bank of New York was not party to said injunction proceedings. That the bonds were issued after the temporary injunction was granted & served on all the judges of the county court.

That the agent of the county *who* was authorized to deliver the bonds to the construction committee, under the terms of the order of subscrip-

tion, but was by a subsequent order of the county court ordered
71 not to take any action towards delivering up the bonds till the application for injunction aforesaid was heard.

That the county court never did make any order, as required by the terms of subscription, directing the National Park Bank of New York to deliver them up, the county court did afterwards, by special order of that court, fund the coupons as they matured on those bonds, issuing new bonds of the County of Cass to the amount of $15,000, on the 25th of September, 1871, as will appear by copy of order hereto attached, marked B, but none of the bonds in suit were among the funded bonds.

Exhibit B is as follows, to wit:

STATE OF MISSOURI,
County of Cass, ss:

Be it remembered that at a special term of the county court, within and for the county of Cass, in the State of Missouri, begun and held at the court-house in the city of Harrisonville, on Monday, the 25th day of September, A. D. 1871, and on said Monday, it being the first day of said term—present J. C. Stevenson, J. C. Copeland and R. W. Forsyth,
72 county justices—among other proceedings, the following were had and made, to wit:

Ordered by the court that whereas the bonds of Cass County, amounting to three hundred thousand dollars, issued to aid in the construction of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, were delivered to the construction committee of said branch railroad after the time had passed for the annual levy of taxes for the year A. D. 1871; and whereas for that reason no provision has been made for the payment of the coupons of interest to mature on said bonds prior to the time that another levy can lawfully be made.

And whereas it is the desire and intention of this court to protect and preserve the credit of Cass County by meeting her engagements promptly and in good faith.

And whereas, the failure of the court to make provision for the payment of said coupons for the reasons aforesaid will, unless some other provisions are made, necessitate the levy of an amount upon the next annual assessment sufficient to pay the first five coupons of interest maturing upon each of said bonds, which might prove burdensome
73 upon the taxpayers of the county if required upon a single assessment.

And whereas fifteen thousand dollars of coupons of interest upon said bonds did mature and become due and payable on the 1st day of August, A. D. 1871, and still remain unpaid.

Therefore, for the purpose of protecting and preserving the credit of Cass County, and lessening the burdens of taxation, and under and by virtue of the authority conferred upon the court so to do, by an act of the general assembly of the State of Missouri, entitled "An act to enable counties, cities, and incorporated towns to fund their respective debts," passed and approved on the 24th day of March, 1868, it is ordered by the court that the said indebtedness so due by the county, as aforesaid, on account of said fifteen thousand dollars of coupons be funded, and that for the purpose of funding said indebtedness that there be issued and delivered to the holder of said coupons on their return to the county treasurer of Cass County, coupon bonds of the county of Cass of the denomination of five hundred dollars each, bearing
74 date the 1st day of August, 1871, and numbered one to thirty inclusive, with interest at the rate of ten per cent. per annum,

payable semi-annually at the banking house of Donnell, Lawson & Co., in the city and State of New York, at which place the principal of said bonds shall also be payable three years after the date thereof, the said bonds to be signed by the presiding justice of this court, and attested by the clerk under the seal thereof, and the coupons to be signed by said clerk; the said clerk being in person absent from the county and State, the said bonds shall be attested and said coupons signed in his name by Henry Jerard, his duly appointed and legally authorized deputy.

It is further ordered by the court that upon the maturity of the next two instalments of interest upon said $300,000 in bonds, that the same shall be funded and bonds of the county issued for that purpose, to bear date respectively on the 1st day of February, 1872, and on the 1st day of August, 1872, with coupons attached for the payment of in-
75 terest semi-annually at the rate of ten per cent. per annum, said coupons of interest to be payable at the bank of Donnell, Lawson & Co., in the city and State of New York; the principal of said bonds shall be payable at said banking house in equal amounts in five and seven years after the date thereo; said bonds to be signed by the presiding justice of this court and attested by the clerk of the court, under the seal thereof, and such further arrangements for the sale thereof and the payment of said coupons be made as the subsequent orders of this court may direct.

Also the following:

Now at this day comes J. R. Cline, attorney for the parties holding bonds of Cass County, issued to the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, and presents receipt of W. H. Barrett, county treasurer, for fifteen thousand dollars of coupons upon said bonds, whereupon it is ordered by the court that the interest-funding bonds of Cass County, Nos. one to thirty inclusive, provided for in the previous order of this court, made of this day, be delivered to
76 said J. R. Cline, att'y, as aforesaid, and the said receipt filed in the records of this court, all of which is accordingly done.

STATE OF MISSOURI,
County of Cass, ss:

I, C. H. Dore, clerk of the county court, within and for the county and State aforesaid, certify that the above and foregoing are true and correct copies of orders made in said court on that behalf, as the same appear entered on the records of said court now in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at office in Harrisonville, this 7th day of April, A. D. 1873.

[SEAL.] C. H. DORE, *Clerk.*

The court further finds that the Tebo and Neosho Railroad Company was incorporated by, and organized under, the provisions of an act of the general assembly of the State of Missouri, approved January 16th, 1860, entitled, "An act to incorporate the Tebo & Neosho Railroad Company"; and another act of the general assembly of Missouri, ap-
77 proved November 21st, 1857, and entitled "An act to incorporate the Osage Valley and Southern Kansas Railroad Company"; and also that the general assembly of the State of Missouri passed an act entitled "An act to aid in the building of branch railroads in the State of Missouri," approved March 21, 1868.

The court further finds that it was and is stipulated and agreed between the plaintiff and defendant in this cause that the acts of the general assembly of the State of Missouri, above referred to, as they are published in volumes purporting to be the session acts of said general assembly of the State of Missouri, may be considered as read in evidence in this cause, and that the charters of said companies and all special or general acts having relation to the questions involved in this case, as well as the act of March 21st, 1868, above referred to, may be considered in evidence, and the same or any portions thereof may be used and read before the Supreme Court of the United States on writ of error as if the same constituted a part of this finding.

78 The court further finds that on the 6th of June, A. D. 1870, the board of directors of the Tebo & Neosho Railroad Company adopted the following resolutions, marked Exhibit C, to wit:

"Resolved by the board of directors of the Tebo & Neosho Railroad Co., That it is the desire of this company to build a branch railroad from a point on the main line of the road of said company, at or near the town of Clinton, Henry County, northwestwardly in the general direction of Kansas City, to a point either on the Pacific Railroad eastwardly of said city, or to a point at said city on the line of road lately known as the Cameron and Kansas City Railroad, said branch railroad to be designated and known as the Clinton & Kansas City Branch of the Tebo & Neosho Railroad, and that the same is designated and established under the provisions of the charter of this company and the act of the general assembly of Missouri entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved, &c., adopted June 6th, 1870."

79 The court further finds that on the 11th day of October, A. D. 1870, Tebo & Neosho Railroad Company and the Missouri, Kansas & Texas Railroad Company, a corporation organized under the laws of Kansas, entered into a contract, a copy of which is hereto attached marked Exhibit D, which was duly filed in the office of the *office of the* secretary of state of Missouri, on the 4th day of January, 1871, and is as follows, to wit:

This indenture, made the eleventh day of October, in the year of our Lord one thousand eight hundred and seventy, between the Tebo and Neosho Railroad Company, a corporation organized under the laws of the State of Missouri, party of the first part, and the Missouri, Kansas and Texas Railway Company, a corporation organized under the laws of the State of Kansas, party of the second part, witnesseth:

That in consideration of the sum of one dollar paid to the said party of the first part by the said party of the second part, the receipt of which is hereby acknowledged, and of the benefits and advantages them thereunto moving, and in accordance with a resolution of

80 the stockholders of the party of the first part, passed on the 11th day of October, A. D. 1870, and the consent in writing of a majority in interest of the stockholders of the party of the first part, the said parties of the first and second parts have reciprocally covenanted and agreed to and with each other as follows:

The party of the first part doth hereby sell, convey, and transfer to the said party of the second part all its privileges, rights, powers, franchises, real estate, and other property, the whole or a part of which is in this State, excepting only such as belong to the extension of the Tebo and Neosho line north from Sedalia, via Boonville, Fayette, and Moberly, to the railroad bridge at West Quincy, declaired July 2d, 1869, cer-

tificate of which, dated July 3d, was filed in the office of secretary of state, and doth consent to a merger of the same with the franchises, property, and rights of said party of the second part and the said Missouri, Kansas and Texas Railway Company, party of the second part, shall have, exercise, and enjoy all the rights, powers, privileges, and immunities of the original charter of the Tebo and Neosho Railroad Company, and of the several amendments thereto, in the same
81 manner and to the same extent as has been heretofore exercised and enjoyed by the said party of the first part, or by the several shareholders in said company whose stock shall be exchanged as herein provided, either or both.

And the said party of the second part does hereby accept the terms and conditions of the within instrument.

And the said party of the second part further agrees to increase its capital stock thirty-six thousand five hundred and seventy-five shares, being an amount equal to the capital stock of said party of the first part, which has been subscribed and paid for by parties, individuals, or the several towns, cities, and counties situated along the portion of the road of said party of the first part so conveyed and merged, and to issue and deliver to the holder of every share of the capital stock of said party of the first part so conveyed and merged, and to issue and deliver to the holder of every share of the capital stock of said party of the first part so subscribed and paid for in good faith, or contracted to be issued
82 as aforesaid in exchange therefore, in accordance with the terms of the resolution of the stockholders of said party of the first part, passed October the eleventh, 1870, and authorizing this conveyance, one share of the par value of one hundred dollars of the stock of said party of the second part, subject to all calls and liabilities, if any, attaching to the stock so exchanged.

In witness whereof the said parties hereto have caused their respective seals to be hereto *to* affixed, and these presents to be signed by their respective presidents, the nineteenth day of October, A. D. 1870.

THE TEBO AND NEOSHO RAILROAD COMPANY,
[L. S.] By ASA C. MARVIN, *President.*
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
[L. S.] By LEVY PARSONS, *President.*

The court further finds that the Tebo & Neosho Railroad Company never solicited any subscription of stock for the building of the branch road; nor has it ever accepted any subscription, or in any way ratified any subscription.

83 But the court finds that the Tebo & Neosho Railroad Company did authorize a committee in charge of the construction of said branch road to use the name of the company and to solicit subscriptions in its name to the use of said branch, and never issued any certificates of stock to Cass County, nor ever agreed to issue any certificates, nor has the Tebo & Neosho Railroad Company ever received any bonds of the county of Cass, nor has the Missouri, Kansas, and Texas Railroad Company ever issued any stock to Cass County, nor agreed to issue any, nor has it ever received any bonds of the County of Cass; that the road was never completed and the work long since abandoned, only 17 miles of the road in Cass County having been graded.

The court further finds that when the bonds in question were signed and sealed ready to be issued there were at least six persons present, including two of the three justices of the county court, the clerk of the

court, the county attorney, and persons not officers of the county,
84 but no representative of the railroad company was present.

All the orders of the county court relating to the issue of the bonds were made in open court, and the whole matter received the greatest publicity.

The court was not unanimous. On the question of making the subscription, one judge dissented. When the railroad company presented their contract for the construction of the road, one of the judges who had favored the subscription opposed the contract, while the one who had opposed the subscription favored the adoption of the contract.

On another occasion one of the judges who favored the subscription dissented from and opposed the appointment of said J. R. Cline as agent for the county in the transaction of its business with said railroad company.

Application was made by the company to the county court in June for the issue of the bonds. They were never issued till August.

The road, if constructed, would have passed near the farms of
85 the two justices of the county court who voted for the subscription.

The remonstrances against subscriptions came, in the main, from the inhabitants of Pleasant Hill and the vicinity, a portion of the county distant from the route of the road as finally adopted.

The same people had previously urged the making of the subscriptions when there was a prospect of building the road through that city.

CONCLUSION OF LAW.

The court finds that the plaintiff is entitled to recover, and defendant excepts.

Correct. JOHN F. DILLON.

Jas. O. Broadhead, att'y for def't; T. K. Skinkes, att'y for pl't'f.

By consent, def't has until June 5th, 1876, to file supersedeas bond, to be approved by Krekel, judge.

JOHN F. DILLON.

The bond required will be 10,000 dollars.

A. KREKEL, *Judge.*

And the bill of exception is in words and figures following, to wit:

86 *Bill of exception.*

United States circuit court for the western district of Missouri.

SOLOMON GILLETT, PL'FF,
vs.
CASS COUNTY, DEF'T.

Be it remembered, that the above-entitled cause coming on to be heard, and the parties appearing by their respective attorneys, the court sitting as a jury finds the following facts to be true, to wit:

(See 'pecial finding, pages 61–85.)

Whereupon to the court finds for the plaintiff in the sum of seven thousand one hundred and three & $\frac{25}{100}$ dollars.

And to the judgment and opinion of the court in finding for the plaintiff upon the said statement of facts, the defendant at the time excepted,

and prays that this its bill of exceptions may be signed, sealed, and made a part of the record, which is done.

[SEAL.] JOHN F. DILLON,
Circuit Judge.

Correct. T. K. SKINKES,
Att'y for Pl'ff.

And afterward, on the 29th day of May, A. D. 1876, it being in vacation of said circuit court, the following proceedings were had in this case, to wit:

87 SOLOMON L. GILLETT *vs.* CASS COUNTY. } 283.

This day comes the defendant, by James O. Broadhead, esq'r, its attorney, and presents bond for supersedeas writ of error to reverse the decision of this court in the above cause, and citation admonishing the plaintiff to appear at a Supreme Court of the United States on the second Monday of October next; and thereupon said bond is approved by the honorable Arnold Krekel, judge, said writ of error allowed, and citation signed.

And said bond is in words and figures following, to wit:

Appeal bond.

Know all men by these presents, that we, the County of Cass, in the State of Missouri, as principal, and Alexander C. Briant and John Funk as sureties, are held and firmly bound unto Solomon L. Gillett in the full and just sum of ten thousand dollars, to be paid to the said Solomon L. Gillett, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents, sealed with our seals, and dated this
88 twenty-sixth day of May, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas, lately, at the November term, A. D. 1875, of the circuit court of the United States for the western district of Missouri, in a suit depending in said court between Solomon L. Gillett, plaintiff, and the County of Cass, in the State of Missouri, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Solomon L. Gillett, plaintiff as aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the second Monday of October next:

Now, the condition of the above obligation is such, that if the said County of Cass shall prosecute said suit to effect, and answer all damages and costs, if it fails to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

H. M. BLEDSOE, *Presiding Justice.* [SEAL.]
A. C. BRIANT. [SEAL.]
JOSEPH FUNK. [SEAL.]

Sealed and delivered in presence of—

[SEAL.] ROB'T ADAMS, Jr.,
Notary Public in & for Cass County, Missouri.

Approved by—

A. KREKEL, *Judge.*

89 UNITED STATES OF AMERICA,
State of Missouri, County of Cass, ss:

A. C. Briant, being by me first duly sworn, doth depose and say that he is the owner in fee simple of over seven hundred acres of improved land in Cass County, beside other real estate; that the assessed value of the same is something over five thousand dollars, and that there is no incumbrance whatever upon any of said real estate; that his property of which he is the owner is assessed at ten thousand dollars or thereabouts, and he is entirely free from debt.

A. C. BRIANT.

Subscribed and sworn to before me this 26th day of May, A. D. 1876.
[SEAL.] ROBT. ADAMS, JR.,
Notary Public. (*Commissioned June* 27, 1872; *expires June* 27, 1876.)

John Funk, being by me first duly sworn, doth depose and say that he is the owner in fee simple of three hundred and ninety-five acres of land improved in Cass County, that the same is assessed at three
90 thousand nine hundred and fifty dollars, and the same is free from incumbrance except a mortgage given to the county for school money of four hundred dollars. That his property is assessed at ten thousand dollars, including stock and other personal property.

JOHN FUNK.

Subscribed and sworn to before me this 26th day of May, 1876.
[SEAL] ROBT. ADAMS, JR.,
(*Notary Public. Commissioned June* 27, 1872;
commission expires June 27, 1876.)

91 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

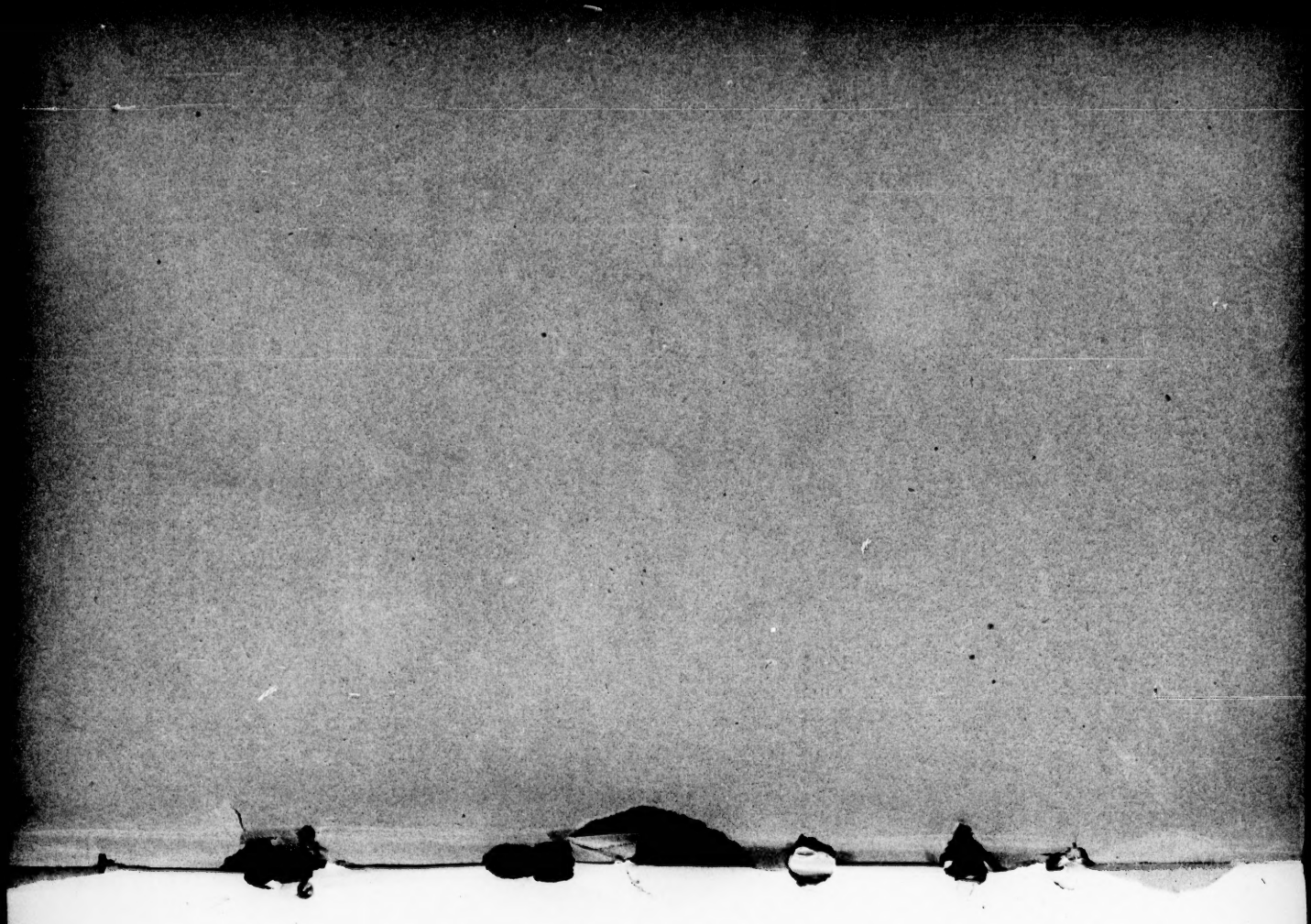
I, Henry C. Geisberg, clerk of the circuit court of the United States for the western district of Missouri, do hereby certify that the writing hereto annexed is a true transcript of the record and proceedings in case No. 283, of Solomon L. Gillett, plaintiff, against the County of Cass, in the State of Missouri, defendant, as fully as the same remains on file and of record in said case in this office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Jefferson, in said district, this 19th day of July, A. D. 1876.

[SEAL.] H. C. GEISBERG, *Clerk.*

(Indorsed:) Case No. 283. United States circuit court, western district of Missouri. Solomon L. Gillett vs. The County of Cass, in the State of Missouri. Duly certified copy of the record and proceedings in the above-entitled cause.

(Indorsement on cover:) No. 291. The County of Cass, plaintiff in error, vs. Solomon L. Gillett. W. Missouri C. C. U. S. Filed October 25th, 1876.



IN THE SUPREME COURT OF THE UNITED STATES.

THE COUNTY OF CASS,
Plaintiff in Error,

vs.

SOLOMON L. GILLETT,
Defendant in Error.

No. 68.
OCT. TERM, 1879.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

JAMES O. BROADHEAD,
Attorney.

Riverside Press Print, 302 N. Main Street, St. Louis.

IN THE SUPREME COURT OF THE UNITED STATES.

THE COUNTY OF CASS,
Plaintiff in Error.
vs.
SOLOMON L. GILLETT,
Defendant in Error.

STATEMENT.

THIS is an action brought on coupons detached from bonds, of one of which the following is a copy:

"United States of America. $1,000. County Bond, No. 61. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

KNOW ALL MEN BY THESE PRESENTS, That the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit, and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars which sum the said county, for value received, hereby promises to pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D. 1891, redeemable, however, at the option of the county court of said county, at any time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per cent. per annum, which interest

shall be payable semi-annually, on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court, of the County of Cass, in the State of Missouri, and in pursuance of, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosha Railroad Company,' approved January 16th, 1860, and an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the orders thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D. 1871.

JEHIEL C. STEVENSON,

Presiding Justice of the County Court of Cass County, Missouri.

Attest: C. H. DORE,

Clerk of the County Court of Cass County, Missouri."

[SEAL OF CASS COUNTY COURT.]

It was stipulated and agreed between the plaintiff and defendant in this cause, that all special and general laws, having relation to the questions involved in this case, and also the act of March 21st, 1868, above mentioned, "shall be considered in evidence, and the same or any portions thereof may be used and read before the Supreme Court of the United States, on writ of error. (See page 52 of printed transcript of record.)

The Tebo and Neosho Railroad Company was incorporated January 16th, 1860. (See Acts of the General Assembly of Mo., 1860, page 402.)

The eighth section of said act of incorporation, reads as follows: "The 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st and 22d sections of an act entitled, 'An act to incorporate the Osage Valley and Southern Kansas Railroad Company, approved November 21st, 1857,' are hereby re-enacted, and declared to be applicable to the company hereby incorporated; and all powers therein contained are extended to the Tebo and Neosho Railroad Company." (See acts of 1857, page 50, for Charter of said Osage Valley, &c., railroad company.)

The 14th Section of the 11th Article of the Constitution of Missouri, adopted in 1865, reads as follows:

"The General Assembly shall not authorize any county, city, or town, to become a stockholder in, or to loan its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to to be held therein, shall assent thereto."

The Act of March 21st, 1868, recited in the bonds in controversy, in connection with the Act of January 16th, 1860, as the authority for issuing said bonds, reads as follows:

"SEC. 1. Any railroad company in this State, authorized by the law to build branches, and wishing to avail themselves of the provisions of this act, shall by its board of directors pass, and cause to be entered upon its records, a resolution setting forth such desire, and designating the name under which such branch shall be built, its points of intersection with the main line, and general course, a certified copy of which resolution shall be filed with the Secretary of State, after which they shall be governed by the provisions of this act.

"SEC. 2. Whenever any such railroad company shall undertake the construction of a branch designated, as provided in the first section of this act, they shall receive donations or subscriptions to stock to aid in its construction, in the name of such branch, which shall be expressed in the certificate of stock issued; the cost and expenses of constructing and operating such branch shall be kept separate and distinct from expenses on the main line. They may borrow money and issue bonds, secured by mortgage on such branch road, to aid in its construction, and, in general, may operate, lease, sell, or consolidate with any connecting road, distinct and separate from their main line and in any other way may manage or dispose of such branch as by law they may be authorized with reference to their main line, and separate therefrom.

"SEC. 3. Any branch road so constructed shall not be holden for any debt, lien, or liability of the main line, nor shall the main line be holden for any debt, lien, or liability of such branch. Any dividends of profits arising out of the business of such branch road shall be divided among the stockholders in said branch, and in all respects the interest of the stockholders in the branch shall be kept separate and distinct from the interests of the stockholders in the main line.

"SEC. 4. The holders of stock in any railroad company, which was subscribed in aid of the construction of a branch road, according to the provisions of this act, shall have the same rights as other stockholders in the company, in the choice of officers; but, in all matters directly and specially affecting the interests of such branch road, the stockholders in such branch shall control; and, for such purpose, the directors, under their by-laws, may, or on the petition of parties representing one-tenth of such stock, shall call a meeting of the stockholders

in such branch, setting forth the object of such meeting; and at any such meeting such stockholders may instruc the board of directors in all matters relating especially to their interests, and they shall be governed by such instructions, if not inconsistent with the laws of the State and the powers of such company," (See session Acts, 1860, page 90.)

"It shall be lawful for the county court of any county in which any part of the route of said railroad, or its branches, may be, or any county adjacent thereto, to subscribe to the stock of the company; * * * and for the stock subscribed in behalf of the county, may issue the bonds of the county; * * * and to take proper steps to protect the interest and credit of the county, may appoint an agent to represent the county, vote for it and receive its dividends." * * *

"SEC. 1. That the sixth line of section thirty, of an act entitled 'An act to authorize the formation of railroad associations, and to regulate the same,' is hereby altered so as to read, *shall for information* instead of *may for information.*" (See Acts 1860, Mo. Legislature, page 88.)

Section thirty, referred to in said act of the 14th of January, 1860, as thereby amended, reads as follows: "It shall be lawful for the county court of any county, and the city council of any city, to subscribe to the capi-

and enjoyed by the said party of the first part, or by the

"SEC. 2. Whenever any such railroad company shall undertake the construction of a branch designated, as provided in the first section of this act, they shall receive donations or subscriptions to stock to aid in its construction, in the name of such branch, which shall be expressed in the certificate of stock issued; the cost and expenses of constructing and operating such branch shall be kept separate and distinct from expenses on the main line. They may borrow money and issue bonds, secured by mortgage on such branch road, to aid in its construction, and, in general, may operate, lease, sell, or consolidate with any connecting road, distinct and separate from their main line and in any other way may manage or dispose of such branch as by law they may be authorized with reference to their main line, and separate therefrom.

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"SEC. 4. The holders of stock in any railroad company, which was subscribed in aid of the construction of a branch road, according to the provisions of this act, shall have the same rights as other stockholders in the company, in the choice of officers; but, in all matters directly and specially affecting the interests of such branch road, the stockholders in such branch shall control; and, for such purpose, the directors, under their by-laws, may, or on the petition of parties representing one-tenth of such stock, shall call a meeting of the stockholders

in such branch, setting forth the object of such meeting; and at any such meeting such stockholders may instruc the board of directors in all matters relating especially to their interests, and they shall be governed by such instructions, if not inconsistent with the laws of the State and the powers of such company," (See session Acts, 1860, page 90.)

"It shall be lawful for the county court of any county in which any part of the route of said railroad, or its branches, may be, or any county adjacent thereto, to subscribe to the stock of the company; * * * and for the stock subscribed in behalf of the county, may issue the bonds of the county; * * * and to take proper steps to protect the interest and credit of the county, may appoint an agent to represent the county, vote for it and receive its dividends." * * *

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Section thirty, referred to in said act of the 14th of January, 1860, as thereby amended, reads as follows: "It shall be lawful for the county court of any county, and the city council of any city, to subscribe to the capital stock of any railroad company, duly organized under this, *or any other act* in this State; and the county court or city council subscribing, or proposing to subscribe to such capital stock, shall, for information, cause an election to be held, to ascertain the sense of the tax-payers of such county, or such city, as to such subscription, and as to whether the same shall be paid by issues of county or city bonds, as the case may be, or by taxation." (See General Stat's Mo., 1855, page 427.)

Southern Kansas RR Co. enacted
declared
by the terms
Capital Stock of the T. & N. RR Co.

On the 6th of June, 1870, the Tebo and Neosho Railroad Company adopted a resolution to build a branch railroad from a point in the main line of the road of said company, "at or near the town of Clinton, in Henry county, northwestwardly, in the general direction of Kansas City, to a point either on the Pacific Railroad, eastwardly of said city, or to a point, at said city, on the line of road lately known as the Cameron and Kansas City Railroad, said Branch railroad to be designated and known as the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, and that the same is designated and established under the provisions of the charter of this company, and the act of the general assembly of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri, approved March 21st, 1868.'"

On the 11th of October, 1870, the Tebo aud Neosho Railroad Company entered into a contract with the Missouri, Kansas and Texas Railway Company, organized and doing business under the laws of the State of Kansas, by the terms of which the former company sold and conveyed to the latter, "All its privileges, rights, powers, franchises, real estate and other property the whole or a part of which is in this State, excepting only such as belong to the extension of the Tebo and Neosho line, north from Sedalia via Boonville," &c. And doth consent to a merger of the same with the franchises, property and rights of said party of the second part; and the said Missouri, Kansas and Texas Railway Company, party of the second part, shall have, exercise and enjoy all the rights, powers, privileges and immunities of the original charter of the Tebo and Neosho Railroad Company, and of the several amendments thereto, in the same manner and to the same extent as has heretofore been exercised and enjoyed by the said party of the first part, or by the

several shareholders in said company, whose stock shall be exchanged as herein provided, either or both; and the said party of the second part does hereby accept the terms and conditions of the within instrument." This contract was filed and recorded in the office of the Secretary of State, of Missouri, on the 4th of January, 1871.

The Tebo and Neosho Railroad Company never solicited any subscriptions of stock for the building of said branch road, nor did it ever accept any subscription, or ratify any subscription. It, however, authorized a committee in charge of the construction of said branch road, to use the name of the company, and to solicit subscriptions, in its name, to the use of said branch. It never issued any certificates of stock to Cass county, plaintiff in error, nor did it ever agree to issue such certificates to Cass county, nor did the Tebo and Neosho Railroad Company ever receive any of the bonds of said county; and the branch was never completed, but its construction was abandoned after the grading of about seventeen miles of the road bed in said county. (See pages 47-54, printed transcript of the record in this cause.)

The order of the county court, in pursuance of which these bonds in suit were issued, was made February 28th, 1871. It authorized the subscription of three thousand shares, to the "Capital stock of the Tebo and Neosho Railroad Company (now, in part, the Missouri, Kansas and Texas Railway Company), in the name of, and for the use and benefit of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, and to aid in the construction thereof." The aggregate amount of the subscription thus made, is three hundred thousand dollars; and it was authorized and made, by the county court, under the charter of the Tebo and Neosho Railroad Company, and under the act of the general assembly of the State of Missouri, approved March 21st, 1868, entitled

"An act to aid the building of branch railroads in the State of Missouri."

The defendant in error is an innocent holder, for value, of the coupons sued on, having no knowledge of any infirmity attaching thereto, except such as is derived from the terms and recitals of the bonds. He recovered judgment for $7,103.25.

Upon the trial of the case there was a special finding of facts by the court, which appears at p. 47 of the printed transcript. Judgment was rendered for the plaintiff in the court below, and the case is brought up by writ of error, and the plaintiff in error assigns the following

ERRORS:

I. The Charter of the Tebo and Neosho Railroad Company did not authorize the county court of Cass county to issue the bonds in question, in the absence of the assent of two-thirds of the qualified voters of said county, and the court below erred in holding that such power existed.

II. The act of the Missouri Legislature, of January 14th, 1860, required as a condition precedent to the subscribing of stock to a railroad company, and the issue of bonds to pay therefor, that an election should be held in the county to test the sense of the taxpayers of the county, on the question of making the subscription and issuing the bonds, and the court erred in holding otherwise.

III. The Tebo and Neosho Railroad Company, at the time of the subscription by Cass county to the stock of the branch road, had sold all its interest in and control over the alleged branch road, and had no authority to receive subscriptions of stock for such branch road—or to contract for the issue of bonds on account of such

subscription—nor could the branch road receive such subscriptions or make such contract—and the court erred in holding otherwise.

IV. The county court had no authority to issue the bonds in question, because by the judgment of a court of competent jurisdiction they have been restrained from issuing said bonds—and the court below erred in holding otherwise.

V. It does not appear from the finding of the facts by the court, that the county court of Cass county made any valid contract with the Tebo and Neosho Railroad Company—or any other person or company for the issue of stock to said county—nor that there was in fact any valid subscription by said county court to the stock of any company—and the court therefore erred in rendering judgment for the plaintiff below, on the special finding of facts.

"An act to aid the building of branch railroads in the State of Missouri."

The defendant in error is an innocent holder, for value, of the coupons sued on, having no knowledge of any infirmity attaching thereto, except such as is derived from the terms and recitals of the bonds. He recovered judgment for $7,103.25.

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III. The Tebo and Neosho Railroad Company, at the time of the subscription by Cass county to the stock of the branch road, had sold all its interest in and control over the alleged branch road, and had no authority to receive subscriptions of stock for such branch road—or to contract for the issue of bonds on account of such

subscription—nor could the branch road receive such subscriptions or make such contract—and the court erred in holding otherwise.

IV. The county court had no authority to issue the bonds in question, because by the judgment of a court of competent jurisdiction they have been restrained from issuing said bonds—and the court below erred in holding otherwise.

V. It does not appear from the finding of the facts by the court, that the county court of Cass county made any valid contract with the Tebo and Neosho Railroad Company—or any other person or company for the issue of stock to said county—nor that there was in fact any valid subscription by said county court to the stock of any company—and the court therefore erred in rendering judgment for the plaintiff below, on the special finding of facts.

BRIEF.

In the case of county of Henry *vs.* Nicolay, 95 U. S. R., p. 626, this court held as follows: "The charter of the Tebo and Neosho Company contained the power to construct the branch, and gave the county the power to subscribe for stock to it; and the act of 1868 authorized such branch and stock to be an independent interest; and the bonds on their face simply showed that they were made to the parent company, 'to the use and in the name of the Clinton and Memphis Branch' 'to aid in building said branch.'"

The court further says, in the same case:

"The fact that before bonds were issued, but not before the subscriptions was made, the parent company sold and assigned a portion of its route, and all franchises connected therewith, to the Missouri, Kansas and Texas Railroad Company, does not alter the case; * * * its franchises were not extinguished, but only transferred, and the subscription had been ordered before the sale took place."

In the case now before the court, the subscription to the stock was not made until the sale of the Tebo and Neosho Road and its franchises to the Missouri, Kansas and Texas Railroad Company, and this constitutes the distinguishing difference between this case and the case of Nicolay *vs.* Henry County, 95 U. S. R.

In the present case it appears that the bonds were executed on the 1st day of February, 1871.

The order of the county court of Cass county in pursuance of which these bonds were issued was made on the 28th day of February, 1871, and under this order the subscription was made.

This subscription was made and could only be made to the parent company, not to the branch as a separate organization. (See section 2 of the Act of March 21st, 1868.)

The bonds as appears from their face were made payable to the Tebo and Neosho Railroad Company to the use and benefit, and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, and yet on the 11th of October, 1870, nearly four months previous to this time the Tebo and Neosho Railroad had sold out to the Missouri, Kansas and Texas Railroad Company "all its privileges rights, powers, franchises, real estate and other property, the whole or a part of which is in the State, excepting only such as belong to the extension of the Tebo and Neosho line north from Sedalia *via* Boonville, &c.

One of the franchises of the Tebo and Neosho Company was to build a branch road; it had resolved that a branch road should be built, to be called the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, as follows:

Resolved, by the Board of Directors of the Tebo and Neosho Railroad Company, That it is the desire of this company to build a branch railroad from a point on the main line of the road of said company, at or near the town of Clinton, Henry county, northwestwardly in the general direction of Kansas City, to a point either on the Pacific Railroad eastwardly of said city, or to a point at said city on the line of road lately known as the Cameron

and Kansas City Railroad, said branch railroad, to be designated and known as the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, and that the same is designated and established under the provisions of the charter of this company, and the act of the general assembly of Missouri, entitled "An act to aid in the building of branch railroads in the State of Missouri," approved, &c.

This resolution was adopted June 6th, 1870.

It was an expression on the part of the company under the provisions of section 1, of the act of 1868, in regard to branch roads, of a desire to build this branch—this branch was to start at a point on the main line of the road, which with all its property and franchises was sold to the Missouri, Kansas and Texas Road, on the 11th of October, 1870—and to run thence in a northwestwardly direction to Kansas City.

"The charter of the Tebo and Neosho Railroad Company gave the company the power to construct branches, and gave the county court power to subscribe stock for it; and the act of 1868 authorized such branch and stock to be an independent interest"—so says this court in the case of Nicholay *vs.* Henry County, but the power to build branches being one of the franchises of the Tebo and Neosho Company passed by the conveyance to the Missouri, Kansas and Texas Railroad Company, which conveyed all property and franchises south of the Pacific Railroad. The Tebo and Neosho Company had no longer any right to build a branch road south of the Pacific Railroad, and of course could not avail itself of the further right to establish an independent interest in the stockholders of the branch road—and the Tebo and Neosho Company was therefore no longer in a condition to make a contract in regard to the subscription for the stock of the branch road—it could not deliver the stock.

The resolution of the 6th of June, 1870, amounts to nothing, because it does not appear that any steps were taken under it—it was simply a declaration of an intention to establish this independent interest in the stockholders of the branch road, which could not be done until the stock was taken, and that must be done through the mother company, because the 2d section of the Act of 1868 provides that—

"Whenever any such railroad company shall undertake the construction of a branch designated as provided in the first section of this act, they (that is the railroad company) shall receive donations or subscriptions to stock to aid in its construction in the name of such branch, which shall be expressed in the certificate of stock issued," &c.

In other words, although there is an independent interest created as soon as the stock is subscribed, there is no separate corporation or person with whom the contract of subscribing for the stock can be made except the company authorized to establish the branch, that company in the language of the law is authorized "*to receive the subscription.*"

The Missouri, Kansas and Texas road might possibly have availed itself of the resolution, and have determined to build the branch road, but that would not avail anything, because it never, in fact, received the subscription. The finding of facts by the court is: "That the Tebo and Neosho Railroad Company never solicited any subscription of stock for the building of the branch road; nor has it ever accepted any subscription, or in any way ratified any subscription." (See p. 53 of the printed record.)

It follows, then, that at the time when the subscription purports to have been made, the Tebo and Neosho Railroad Company was not authorized by the act of 1868,

nor by any other act, to receive the subscription. It could not issue the stock as provided by the second section of that act; it could not receive the bonds, and there is no evidence that it ever did receive them. They never were issued until August, 1871, and to whom does not appear, and, when issued, they were issued in defiance of a temporary injunction of the circuit court, for that county, which was afterwards made perpetual.

The law which authorized the county court to subscribed for stock, also authorized the court to appoint an agent to manage the stock and vote it, and receive its dividends. But for the subscription in question, the county of Cass could demand neither of the Tebo and Neosho Railroad Company, nor of the Missouri, Kansas and Texas Company, certificates of stock, or have any voice in their management or share in their dividends. The county received no certificates of stock in either company, and got *no road.*

The Missouri, Kansas and Texas Company was not bound to carry on the enterprise inaugurated by the Tebo and Neosho Road, and the latter company was powerless to do so when the subscription was made.

In Aspinwall *vs.* Commissioners, 22 Howard, 364, this court says: "The subscription was necessary to make a contract binding upon the county on the one side to take stock and pay in bonds, and upon the other to transfer the stock and receive the bonds for the same." And, in Marsh *vs.* Fulton Co., p. 683, the court says: "This is not a case where the party executing the instruments possessed a general capacity to contract, and where the instrument might, for such reason, be taken without special inquiry into its validity; it is a case where the power to contract never existed, where the instrument might, with equal authority, have been issued by any other citizen of the county. * * * * *

The authority to contract must exist before any protection to an innocent purchaser can be claimed by the holder." And, certainly, the county court of Cass county had no power to contract with a company not authorized to contract.

It appears from the evidence that the contract of the sale made by the Tebo and Neosho Railroad Company to the Missouri, Kansas and Texas Railroad Company was filed in the office of the Secretary of State of Missouri, as required by law, on the 4th day of January, A. D. 1871, before the subscription purports to have been made.

It may be well to call the attention of the court to the provisions of the charter of the Tebo and Neosho Railroad Company in reference to its power to locate and build its road:

The 6th section of the charter is as follows:

"Sec. 6. This company is duly empowered to survey, mark, locate, construct, maintain and operate a railroad, commencing at any point on the Pacific Railroad, between the west bank of the Lamine river and Muddy creek, in Pettis county, by the most direct and practical route in a southerly or southwesterly direction, through Henry county, thence to some point on the State line between the northwest corner of Jasper county and the southeast corner of McDonald county." (See Sess. Acts of Mo., 1860, p. 402.) The company then could only "locate, construct, maintain and operate a railroad," south of the Pacific Railroad.

The last clause of section 6 provides as follows:

"And may extend branch railroads into and through any counties that the directors may deem advisable."

It is difficult to see how this northern *extension* came into being. It is claimed under the grant of power to

extend branches, but if it is only a branch, then the reservation of the northern extension is only the reservation of a branch, and it can hardly be claimed that the company, after it sold out its main line to another company, has the power to establish a branch to a branch, especially as the last branch has no connection with the first, but starts off from a point on the main line, south of the Pacific Road, and then belonging to the Missouri, Kansas and Texas Company.

It is respectfully submitted that the grounds taken by the plaintiff in error in this case are not in conflict with any of the adjudications of this court upon questions of like character. There was no power to issue the bonds, because there was no contract, nor any power to contract in regard to the stock for the payment of which the bonds purport to be issued.

JAMES O. BROADHEAD,
Attorney for Plaintiff in Error.

IN THE

SUPREME COURT of the UNITED STATES.

THE COUNTY OF CASS, Plaintiff in Error,

vs.

SOLOMON L. GILLETT, Defendant in Error.

A. COMINGO,

Att'y for Pl'ff in Error.

J. P. O'Brien & Co., Printers, 225 Pine Street.

IN THE

SUPREME COURT of the UNITED STATES.

THE COUNTY OF CASS, Plaintiff in Error,

vs.

SOLOMON L. GILLETT, Defendant in Error.

STATEMENT.

THIS is an action founded on coupons detached from bonds, of one of which the following is a copy:

"United States of America. $1,000. County Bond, No. 61. County of Cass. State of Missouri. Interest ten per cent. per annum, payable on the 1st days of August and February, in New York.

Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit, and in the name of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county. for value received, hereby promises to pay to the Tebo and Neosho Railroad Company, or bearer, to aid in building the said branch railroad, at the National Park Bank, in the city of New York, in the State of New York, on the 1st day of February, A. D., 1891, redeemable, however, at the option of the county court of said county, at any

time after the lapse of five years after the date hereof, together with interest thereon from the 1st day of February, 1871, until paid, at the rate of ten per centum per annum, which interest shall be payable semi-annually, on the 1st days of August and February of each year, on presentation and delivery at said bank of the coupons of interest hereto severally attached. This bond is issued under and in pursuance of an order of the county court, of the county of Cass, in the State of Missouri, and in pursuance of, and by authority of an act of the general assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the general assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D., 1868. In testimony whereof, the said County of Cass has executed this bond by the presiding justice of the county court of Cass County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court, at the town of Harrisonville, county of Cass, aforesaid, this 1st day of February, A. D., 1871.

JEHIEL C. STEVENSON,

Presiding Justice of the County Court of Cass County, Missouri.

Attest: C. H. DORE,

Clerk of the County Court of Cass County, Missouri."

[SEAL OF CASS COUNTY COURT.]

The order of the county court, in pursuance of which these bonds were issued, was made February 28th, 1871. It authorized the subscription of three thousand shares, to the "Capital stock of the Tebo and Neosho Railroad Company, (now in part the Missouri, Kansas and Texas Railway Company), in the name of, and for the use and benefit of the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, and to aid in the construction thereof." The aggregate amount of the subscription thus made, is three hundred thousand dollars; and it was authorized and made, by the county court, under the charter of the

Tebo and Neosho Railroad Company, and under the act of the general assembly of the State of Missouri, approved March 21st, 1868, entitled "An act to aid the building of branch railroads in the state of Missouri."

The act incorporating the Tebo and Neosho Railroad Company, was approved January 16th, 1860. Sections eight to twenty-two, inclusive, of an act incorporating the Osage Valley and Southern Kansas Railroad Company, approved November 21st, 1857, are re-enacted, and declared to be applicable to the Tebo and Neosho Railroad Company.

It was stipulated and agreed between the plaintiff and defendant in this cause, that all special or general laws, having relation to the questions involved in this case, and also, the act of March 21st, 1868, above mentioned, " shall be considered in evidence, and the same or any portions thereof may be used and read before the Supreme Court of the United States, on writ of error. (See page 52 of printed transcript of record.)

On the 6th of June, 1870, the Tebo and Neosho Railroad Company adopted a resolution to build a branch railroad from a point in the main line of the road of said company, " at or near the town of Clinton, in Henry county, northwestwardly, in the general direction of Kansas City, to a point either on the Pacific Railroad, eastwardly of said city, or to a point, at said city, on the line of road lately known as the Cameron and Kansas City Railroad, said Branch railroad to be designated and known as the Clinton and Kansas City Branch of the Tebo and Neosho Railroad, and that the same is designated and established under the provisions of the charter of this company, and the act of the general assembly of Missouri, entitled, 'An act to aid in the building of branch railroads in the state of Missouri, approved, &c.' "

On the 11th of October, 1870, the Tebo and Neosho Railroad Company entered into a contract with the Missouri, Kansas and Texas Railway Company; organized and doing business under the laws of the state of Kansas, by the terms of which the

former company sold and conveyed to the latter, "All its privileges, rights, powers, franchises, real estate and other property, the whole or a part of which is in this State, excepting only such as belong to the extension of the Tebo and Neosho line, north from Sedalia via. Boonville," &c. And doth consent to a merger of the same with the franchises, property and rights of said party of the second part; and the said Missouri, Kansas and Texas Railway Co., party of the second part, shall have, exercise and enjoy all the rights, powers, privileges and immunities of the original charter of the Tebo and Neosho Railroad Company, and of the several amendments thereto, in the same manner and to the same extent as has heretofore been exercised and enjoyed by the said party of the first part," &c. This contract was filed and recorded in the office of the Secretary of State, of Missouri, on the 4th of January, 1871.

The Tebo and Neosho Railroad Company never solicited any subscriptions of stock for the building of said branch road, nor did it ever accept any subscription, or ratify any subscription. It, however, authorized a committee in charge of the construction of said branch road, to use the name of the company, and to solicit subscriptions, in its name, to the use of said branch. It never issued any certificates of stock to Cass county, plaintiff in error, nor did it ever agree to issue such certificates to Cass county, nor did the Tebo and Neosho Railroad Company ever receive any of the bonds of said county; and the branch was never completed, but its construction was abandoned after the grading of about 17 miles of the road bed in said county. (See pages 47-54, printed transcript of the record in this cause.)

The Tebo and Neosho Railroad Company was incorporated January 16th, 1860. (See Acts of the General Assembly of Mo., 1860, page 402.)

The eighth section of said act of incorporation, reads as follows: "The 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st and 22nd sections of an act entitled,

'An act to incorporate the Osage Valley and Southern Kansas Railroad Company, approved November 21st, 1857,' are hereby re-enacted, and declared to be applicable to the company hereby incorporated; and all powers therein contained are extended to the Tebo and Neosho Railroad Company." (See Acts of 1857, page 50, for Charter of said Osage Valley, &c., railroad company.)

The 14th Section of the 11th Article of the Constitution of Missouri, adopted in 1865, reads as follows:

"The General Assembly shall not authorize any county, city, or town, to become a stockholder in, or to loan its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent thereto."

The Act of March 21st, 1868, recited in the bonds in controversy, in connection with the Act of January 16th, 1860, as the authority for issuing said bonds, reads as follows:

"SEC. 1. Any railroad company in this State, authorized by law to build branches, and wishing to avail themselves of the provisions of this act, shall by its board of directors pass, and cause to be entered upon its records, a resolution setting forth such desire, and designating the name under which such branch shall be built, its point of intersection with the main line, and general course, a certified copy of which resolution shall be filed with the Secretary of State, after which they shall be governed by the provisions of this act.

"SEC. 2. Whenever any such railroad company shall undertake the construction of a branch designated, as provided in the first section of this act, they shall receive donations or subscriptions to stock to aid in its construction, in the name of such branch, which shall be expressed in the certificate of stock issued; the cost and expenses of constructing and operating such branch shall be kept separate and distinct from expenses on the main line. They may borrow money and issue bonds, secured by mortgage on such branch road, to aid in its construction, and, in general, may operate, lease, sell, or consoli-

date with any connecting road, distinct and separate from their main line and in any other way may manage or dispose of such branch as by law they may be authorized with reference to their main line, and separate therefrom.

"SEC. 3. Any branch road so constructed shall not be holden for any debt, lien, or liability of the main line, nor shall the main line be holden for any debt, lien, or liability of such branch. Any dividends of profits arising out of the business of such branch road shall be divided among the stockholders in said branch, and in all respects the interest of the stockholders in the branch shall be kept separate and distinct from the interests of the stockholders in the main line.

"SEC. 4. The holders of stock in any railroad company, which was subscribed in aid of the the construction of a branch road, according to the provisions of this act, shall have the same rights as other stockholders in the company, in the choice of officers; but, in all matters directly and specially affecting the interests of such branch road, the stockholders in such branch shall control; and, for such purpose, the directors, under their by-laws may, or on the petition of parties representing one-tenth of such stock, shall call a meeting of the stockholders in such branch, setting forth the object of such meeting; and at any such meeting such stockholders may instruct the board of directors in all matters relating especially to their interests, and they shall be governed by such instructions, if not inconsistent with the laws of the State and the powers of such company." (See session Acts, 1860, page 90)

On the 14th of January, 1860, the legislature of Missouri passed the following, as an amendment of the general law of the State, regulating the subscription of stock to railroad companies:

"SEC. 1. That the sixth line of section thirty, of an act entitled 'An act to authorize the formation of railroad associations, and to regulate the same,' is hereby altered so as to read, *shall for information*, instead of, *may for information*." (See Acts 1860, Mo. legislature, page 88.)

Section thirty, referred to in said act of the 14th of January, 1860, as thereby amended, reads of follows: "It shall be lawful for the county court of any county, and the city council of any city, to subscribe to the capital stock of any railroad company duly organized under this, *or any other act* in this State; and the county court or city council subscribing, or proposing to subscribe to such capital stock, shall, for information, cause an election to be held, to ascertain the sense of the tax-payers of such county, or such city, as to such subscription, and as to whether the same shall be paid by issues of county or city bonds, as the case may be, or by taxation." (See General Stat's Mo., 1855, page 427.)

The 13th section of the Charter of the Osage Valley and Southern Kansas Railroad Company, re-enacted, and declared applicable to the Tebo and Neosho Railroad Company, by the terms of its Charter, granted January 16th, 1860, above referred to, reads as follows:

> "Dividends of so much of the profits of said company as shall appear advisable to the directors, shall be declared semi-annually, and be paid to the stockholders or their legal representatives, on application at the office of said company, at any time after the expiration of ten days from the time of the same; but the directors may reserve or set apart a portion of the profits, as a contingent fund to meet expenditures and losses."

The 14th section confers the power on county courts to subscribe to the capital stock of said T. and N. Railroad Company. The material part of said section reads as follows:

> "It shall be lawful for the county court of any county in which any part of the route of said railroad, or its branches, may be, or any county adjacent thereto, to subscribe to the stock of the company; * * * and for the stock subscribed in behalf of the county, may issue the bonds of the county; * * * and to take proper steps to protect the interest and credit of the county, may appoint an agent to represent the county, vote for it and receive its dividends." * * *

The Charter of the T. and N. R. Co., (see 22 sect. charter O. V. and S. K. R. Co.) makes each stockholder of the company liable to its creditors, to an amount equal to the unpaid stock held by him. This provision of the charter is annulled by the act of March 21st, 1868, and by the conditions of the subscriptions and bonds in question.

The defendant in error is an innocent holder, for value, of the coupons sued on, having no knowledge of any infirmity attaching thereto, except such as is derived from the terms and recitals of the bonds. He recovered judgment for $7,103.25.

Upon the trial of the case there was a special finding of facts by the Court, which appears at p. 47 of the printed transcript. Judgment was rendered for the plaintiff in the Court below, and the case is brought up by writ of error, and the plaintiff in error assigns the following

ERRORS:

I. The Charter of the Tebo and Neosho Railroad Company did not authorize the county court of Cass county to issue the bonds in question, in the absence of the assent of two-thirds of the qualified voters of said county, and the court below erred in holding that such power existed.

II. The act of the Missouri Legislature, of January 14th. 1860, required as a condition precedent to the subscribing of stock to a Railroad Company, and the issue of bonds to pay therefor, that an election should be held in the county to test the sense of the tax-payers of the county, on the question of making the subscription and issuing the bonds, and the Court erred in holding otherwise.

III. The Tebo and Neosho Railroad Company at the time of the subscription by Cass county to the stock of the branch road, had sold all its interest in and control over the alleged branch road, and had no authority to receive subscriptions of stock for such branch road—or to contract for the issue of bonds

on account of such subscription—nor could the branch road receive such subscriptions or make such contract—and the Court erred in holding otherwise.

IV. The county court had no authority to issue the bonds in question, because by the judgment of a Court of competent jurisdiction they have been restrained from issuing said bonds—and the Court below erred in holding otherwise.

V. It does not appear from the finding of the facts by the Court, that the county court of Cass county made any valid contract with the Tebo and Neosho R. R. Co.—or any other person or company for the issue of stock to said county—nor that there was in fact any valid subscription by said county court to the stock of any company—and the court therefore erred in rendering judgment for the plaintiff below, on the special finding of facts.

BRIEF AND ARGUMENT.

Plaintiff in error denies the validity of the bonds from which the coupons, sued on in this cause, were detached, and assumes the burden of showing their invalidity.

It must be admitted that, if the county court of Cass county had the authority and power, under the laws of Missouri, to subscribe for stock, in manner and form as it made the subscription in this case, the validity of the bonds issued to pay thetsubscription, cannot be questioned, in the hands of an innocent holder, for value.

The following facts, it is insisted, appear on the face of the bonds, and are thereby brought to the notice of each holder of these securities:

1st. That said bonds were *not* issued for or on account of stock in the Tebo and Neosho Railroad Company, subscribed by or for the county of Cass.

2d. That they *were* issued to said company, as a trustee, for the use and benefit of the Clinton and Kansas City branch of said Tebo and Neosho railroad,

3d. That the county court of Cass county, in making the subscription and in issuing the bonds, assumed and pretended to derive the power so to do, from the act of January the 16th, 1860, incorporating the Tebo and Neosho Railroad Company, and the act of March 21st, 1868, to "aid in the building of branch railroads."

4th. That the making of said subscription, and the issuing of said bonds, were not authorized by a vote of two-thirds of the qualified voters of Cass county, nor by a vote of a majority of the tax-payers of said county, nor by any vote whatever; but that the county court assumed to act, and acted in that behalf, solely under and in pursuance of the two statutes referred to, and, by their titles, recited in the bonds.

It is further submitted, that it is presumed the holders of said bonds received them with full knowledge of the laws of the State of Missouri, regulating and affecting, in any manner, the power of the county court to subscribe the stock, to pay which they were issued. And hence,

1st. They received and held said bonds with knowledge of the fact, that by the terms of the charter of the Tebo and Neosho Railroad Company, the county court of Cass county had authority, or power, to subscribe to the capital stock of said company, and issue the bonds of the county to pay for stock thus subscribed, and that this was the limit of its power in that behalf.

2d. They received and held said bonds with knowledge of the further fact that they had not been issued to pay for stock in the Tebo and Neosho Railroad Company; but had been issued to pay a subscription to said company, as trustee, and for the use and benefit of the alleged branch railroad, and that under the laws recited, said branch did not, and could not have any interest in the main line.

3d. They received and held said bonds, with knowledge of the fact, that in every respect, except in name, and in the constitution of its board of directors, the alleged branch road, for the use and benefit of which the subscription was made, and said bonds issued, was an independent corporation; that it could "not be holden for any debt, lien, or liability of the alleged main line, and that said main line could not be holden for any debt, lien, or liability of the alleged branch; and that, in all respects, the interests of the stockholders, in the branch, were separate and distinct from the interests of the stockholders in said main line;" and further, that the directors of the Tebo and Neosho Railroad Company had nothing whatever to do with the pretended branch, except in obedience to the lawful orders of its stockholders.

If these several propositions are true, it is submitted, that the bonds are void, even in the hands of bona fide holders, for value; and it is unnecessary to inquire as to the effect of the fraud practiced in making the subscription to a pretended branch road, and issuing county bonds to pay it, at a time when the main line had ceased to exist.

It is true that the bonds were not issued for or on account of stock in the Tebo and Neosho Railroad Company, and does this fact appear on the face of the bonds?

That they were not issued on that account, is an unquestionable fact. They are made payable to that company, to aid in building an alleged branch railroad, in pursuance of the provisions of the act of March 21st, 1868, recited in the bond, and that act expressly provides that the "dividends of profits arising out of the business of the branch road, shall be divided among the stockholders in the branch," &c. (See sect. 3d of act.) And by the 4th section it is provided that the stockholders in the branch shall have the control and management of its affairs. And furthermore, the 2d section of the act provides that the certificates of stock shall show that they are for stock in the branch. This entire act is as much a part of the bond, as if it had been incor-

porated therein; and all its provisions are, by reference, brought to the attention of the holder of the supposed obligations. Under the provisions of said act, the county court could not subscribe to the capital stock of the T. & N. R. Co. (Root vs. Goddard, 3d McLean, 103; Root vs. Wallace, 4 McLean, 8; Fowler vs. Brantley, 14 Peters, 321; Harshman vs. Bates county, 2 Otto, 575.)

That the bonds were issued to the T. & N. R. Co., as a trustee, and not in payment of *stock* subscribed to said company, is manifest from the express terms of the contract itself. The promise is to pay the T. & N. R. Co., or bearer, to the "*use* and *benefit*, and in the *name* of" the branch road, to aid in its construction; thus unmistakably creating said company a trustee, and placing under its control securities, bearing on their face evidence of their purpose and character.

The alleged branch road was to be the sole beneficiary—is so constituted by the express language of the bonds—and the T. & N. R. Co. could not lawfully apply to its own benefit, one farthing of the proceeds realized from their sale.

The fact that the subscription was made, and the bonds issued under and in pursuance of powers which the court supposed were contained in the two acts referred to and recited, by their titles in the bonds, is important, in that it shows that no other authority was invoked, and that in the opinion of the county court, and its legal advisers, and also in the opinion of the applicants for the bonds, it was necessary to invoke both these acts in making the subscription, and issuing the securities. It appears, from the recitals, that the county court did not deem it necessary to comply with the requirements of other statutes, or the requirements of 14th Sect. 11th Art. of the Constitution, preliminary to making and paying the subscription. Or, in other words, it appears from the recitals, that the subscription was made, and the bonds issued, regardless of the act of January 14th, 1860, and of the constitutional limitation mentioned; the effect of which will be hereafter shown.

A brief examination of the charter of the T. & N. R. Co., will disclose the power thereby conferred on county courts, so far as relates to subscribing for stock, and issuing bonds to pay it. It is as follows: "It shall be lawful for the county court of any county * * * * to subscribe to the *stock of the company*, and for the *stock* subscribed. it may issue the bonds of the county."

For stock thus subscribed the county became a stockholder in the T. & N. R. Co., had a voice in the management of its affairs, and was entitled to a share in the dividends of its profits. These benefits and privileges are denied the county by the terms of the statutes recited in the bonds, and consequently by the express terms of the bonds themselves.

The first important question, then, that arises in this connection, is: Does the charter of the T. & N. R. Co. empower a county court to subscribe for stock in a supposed branch road, and issue the bonds of the county to pay the subscription, with the express understanding that the subscription is not for the stock of the company, but for stock in the branch; and that it shall not entitle the county to the privileges and benefits of a stockholder in the main line?

It is respectfully submitted that it does not; and that such facts appearing, bonds issued to pay such subscription are wholly void. No such power can be deduced from the charter.

The next question presented, is: Could the county court make the subscription and issue the bonds of the county to pay it, as shown by the record in the case at bar, by simply invoking the power conferred by the charter of the T. & N. R. Co., and the provisions of the act of March 21st, 1868?

The answer is, it cannot. For if the act last mentioned, confers any of the powers necessarily invoked in the making of the subscription, and the issuing of bonds to pay it, they must be exercised in subordination to, and in conformity with, the provisions of the 14th Sect. of the 11th Art. of the Constitution of Mis-

souri; and it appears they were not so exercised. This section, as before shown, requires a vote of two-thirds of the qualified voters of the county, to authorize the subscription. No such vote, nor, indeed, any vote whatever, was taken, and this fact is an inevitable inference from the recitals on the face of the bonds, as before stated.

Had the subscription been for stock in the T. & N. R. Co., under the provisions of its charter alone, and the bonds issued to pay it, no question could arise as to the effect of the constitutional inhibition, for it has been settled, strange to say, that the power to subscribe for stock of a railroad company, without a vote of the people, is a privilege conferred on the corporation, which is in no way affected by said inhibition, nor by any subsequent legislation. (Smith, et. al. vs. Clark county, 54 Mo., 58.)

In that case, however, and in the numerous cases cited and approved by the Court, in the opinion in that case, there had been a subscription, &c., in strict conformity with the charters of the various companies interested. In other words the powers, as *originally conferred*, had been exercised, without taking a vote of the people, as required by subsequent legislation, &c.; and the Court held the bonds were nevertheless valid—that the limitation being *subsequent* to the grant of the power, did not qualify its exercise. The distinction between those cases and the case at bar, is manifest and important.

The case of the State, ex. rel. vs. Green county, 54 Mo., 540, is supposed to bear a striking analogy to the case at bar; but it is submitted that this is erroneous, and that a careful analysis of the facts in that case, and of the argument by which the Court supports the conclusions reached will show it to be erroneous.

The facts in that case are substantially as follows: The subscription was for the *stock* of the H. & St. Joseph R. Co., to aid in constructing a branch; but the bonds, as will be shown, were unlike those involved in the case at bar.

On the 9th of February, 1857, the legislature of Missouri

chartered the Kansas City, Galveston and Lake Superior R. Co. (See Acts of 1857, page 166.) Section 15 confers unlimited power on county courts to subscribe to the capital stock of the company. By Sect. 7, general power, (as by Sect. 6 in the charter of the T. & N. R. Co.), is given to build branch roads. Section 13 *expressly* provides for the building of the said Kansas City and Memphis branch, to aid in building which, the bonds in controversy had been issued. "Said company shall have full power to construct a branch railroad, commencing at or near the City of Kansas, to any point on the Southern boundary of the State, the directors may select; * * * * and shall be governed in all respects by the provisions of this act, in the *construction and operation of said branch road!*" The Hannibal and St. Joseph R. Co., to which the subscription was made, had, at that time, become the owners and were possessed of "all the rights, property, privileges, immunities and franchises" conferred upon, and acquired by the Kansas City, Galveston and Lake Superior R. Co., and other companies that had intervened; and it had resolved to complete the branch authorized by said thirteenth section.

The Hannibal and St. Joseph R. Co. was a wealthy corporation; was in successful operation at the time the subscription was made, and the bonds issued, and was proceeding to complete a branch expressly authorized by the charter of the K. C. G. and Lake Superior R. Co., to whose rights, property, &c., it had unquestionably succeeded.

In the case under consideration the facts, as they appear from the record, are wholly different. The T. & N. R Co., months before the subscription to the alleged branch, by Cass county, had sold all its property, rights, franchises, &c., except in a remote extension, to the M. K. & T. Railway Co,; the latter company acquired no interest in the alleged branch, nor could it have acquired any, under the contract of sale and conveyance, and the alleged branch had neither an actual nor a potential existence as a branch when the subscription was made. Hence the

authority for saying, there is little or no analogy between the facts in The State vs. Green county, and those in the case at bar.

Judge Wagner, after reciting the material facts in The State vs. Green county, supra, proceeds, page 550, as follows:

"The legislative enactments, above cited, show that the original charter of the Kansas City, Galveston and Lake Superior R. Co. gave the power, in direct terms, to construct the branch road out of which this suit sprang; it described its beginning point and terminus, * * * * Authority was given to any county court of any county, through which said branch road ran, to subscribe stock to the company, and issue its bonds to raise funds for the purpose of construction. * * * * "

After further reference to the powers conferred by the charter, the Court, page 550, says: "The proposition is undoubted, that under the original charter, and the amendments thereto, prior to the act of 1868, it was lawful for the county court to make subscriptions. *And if it can be shown that this proceeding is independent of that act*, AND DOES NOT DEPEND UPON IT, IN ANY MANNER, FOR ITS EXERCISE, then its validity must be upheld."

But the following language, used by the Judge, and concurred in by the other judges, is even more significant and conclusive:

"If the act of 1868 substantially changes the character of the company, or attempts to confer upon county courts the power to make subscriptions without first submitting the question to the qualified voters, then, as to such matters I have no hesitation in pronouncing it void. In other words, the act could not organize a new company, giving it such power, *nor confer any additional power in relation to making subscriptions, without a vote of the people*, where it did not previously exist."

And this, be it remembered, is the language of three of the five judges that constituted the Court; for Judge Vories dissented, holding the bond absolutely void, and Judge Sherwood did not sit. It is also worthy of remark that Judge Sherwood, in the

case of the State vs. Garroutte, 67 Mo., 445, has reviewed The State vs. Green county, supra, and dissented from the opinion of the Court in the latter case—holding that the subscription and bonds were void.

Furthermore, there is, as before stated, a marked difference between the bonds in question in the Green county cases, and those involved in the case at bar. These bonds, as before shown, contain, on their face, evidences of their invalidity, in that they are made payable to the T. & N. R. Co.. in trust for the use of a branch. &c. The bonds issued by Green county, are payable to the Hannibal and St. Joseph R. Co., and it does not appear that they were issued to, and held by that company, as a trustee, to aid in the building of a branch road, except so far as that fact may be inferred from the last recital as to the authority in pursuance of which they were issued; which recital was superfluous, if the language of the Court is not misconstrued. (See State vs. Garroutte, supra, pages 451-2.)

Accepting, however, the conclusions of the majority of the Court in The State vs. Green county, as the law of that case, the arguments of the Court show that the Act of March 21st, 1868, was unnecessarily invoked, and that the other acts recited in the bonds furnished authority for issuing them, and for all the proceedings antecedent thereto. "And if," says the Court, "it can be shown that this proceeding is *independent of that act*, and does not depend on it in any manner for its exercise, its validity must be upheld." Such language cannot be misunderstood, nor its effect destroyed.

That the subscription of Cass county, to pay which the bonds in question were issued, could not be made, nor said securities issued, without invoking "*that act*," will not be questioned; and if the arguments quoted have any signification whatever, they support the proposition, that said securities are wholly void. In no possible aspect of the case can the proceedings of the county court of Cass county be upheld, independent of "that act."

Attention is also invited to the Act of January 14th, 1860,

amendatory of the general law, authorizing the organization of railroad associations. (Acts of 1860, p. 88.)

The law as thus amended practically forbids the county court of any county to subscribe to the capital stock of any railroad company organized under that or any other act, in the State of Missouri, without first taking a vote of the tax-payers of the county, to ascertain whether the county shall subscribe; and if so, whether the subscription shall be paid by issuing county bonds, or by taxation. There is no pretence that any such vote was taken; and it is insisted, as before, that the bonds, by their recitals, show it was not. It is also submitted that the act incorporating the T. & N. R. Co. is in *pari materia*, and must be construed in connection with that statute as amended, unless the two are so repugnant as to render this impossible, in which case the latter act, the charter, must be construed independent of the former.

The fact that the general law was amended at the same session, and just two days before the charter was granted is not without significance as to the intention of the legislature. Furthermore, the history of antecedent legislation in Missouri, on the subject, is equally significant, and is worthy of much consideration, in determining the legislative intention and effect. This legislation indicates a disposition to throw safe-guards around the power of county courts in making subscriptions to the capital stock of railroad companies. The first indication of the growing distrust of county courts in the exercise of this power, found expression in 1855, in the act before quoted, providing that county courts *may* ascertain the sense of tax-payers, &c. (See Sec. 30, Stats. Mo., 1855, supra.) The word, *may*, as used in that statute, is held to mean, "shall." (Leavenworth and Des Moines R. Co. vs. Platte Co., 42 Mo., 171.)

All doubts, however, if any exists, as to the meaning of the word, are removed by the amendment of January 14th, 1860, by which it is made unlawful for any county court

to subscribe to the capital stock of any railroad company, without first taking a vote of the tax-payers. It is worthy of note that the Platte City and Des M. R. Company was incorporated prior to the adoption of said amendment but at the same session of the legislature—and that the Court, nevertheless, held that independent of said amendment, the word, "may," as used in the general statutes, means "shall"; and that the county court had no authority to subscribe, &c., without taking a vote of the tax-payers. (L. & Des M. R. Co. vs. Platte county, supra.)

The fact that the charter of the T. & N. R. Co. was granted just two days after the adoption of the amendment referred to, indicates that the powers thereby conferred, were granted, and were to be exercised in subordination to the limitations imposed by the general law as amended. Before county courts might subscribe to the capital stock of any railroad company organized under that, "*or any other act*," they were imperatively required to procure the assent of a majority of the tax-payers; and have them determine whether it should be paid in county bonds or by taxation. Unless it can be shown that the power conferred on county courts by the T. & N. R. Co.'s charter is wholly unaffected by these limitations, there can be no doubt that the county court of Cass county exercised an unwarranted power when it issued the bonds in question. This, it is submitted, would have been the case, had the bonds been made payable to the said company, for its own exclusive use and benefit, without the consent of the tax-payers, the latter fact appearing from the recitals in the bond.

I submit that it is utterly impossible to point out the least semblance of repugnancy between the charter of the T. & N. R. Co. and the general statute, as amended two days previously; and it seems irrational to suppose that the legislature could have intended to grant said company the extraordinary privileges, and confer on county courts, without limitation, the extraordinary powers so expressly and unequivocally denied by the said

amendment. Had there been such intention, it would surely have been expressed by the use of unmistakable language in the charter, and not left to the mere inference of interested and unscrupulous peculators Repeals by implication are not favored. This has become a maxim, and is applicable in the construction of all laws, whether general or special, and whether passed at one time or another. (Sedgwick on Cons. and Stat. Law, 127-8; Bowen vs. Lease, 5 Hill, 221; Canal Co. vs. Railroad Co., 4 Gill & J., 1; Street vs. Commonwealth, 6 W. & S., 209, Brown vs. County Commis., 21 Penn., 37.)

In the construction of statutes, all acts passed at the same session, are to be considered as one; and a later provision will not repeal an earlier, unless there be an express declaration to that effect, or an absolute inconsistency. (Peyton vs. Moseley, 3 B. Monroe, 77, Black vs. Scott, 2 Brockenboro, 325; People vs. Jackson, 30 California, 427; State vs. Rackley, 2 Blackford [Ia.] 249.)

That the general statute, before recited, limiting the power of county courts, and the special act incorporating the T. & N. R. Co., are in *pari materia*, will not be questioned. Nor will it be questioned that these laws must be construed together, and both given their full, intended effect, if this is possible.

That they are not repugnant has been already assumed and repeated. The first, or general law, provides, in effect, that county courts shall proceed in a given manner to exercise a given power; and the last, or special law, simply permits these courts to subscribe to the capital stock of the particular company, thereby incorporated, without prescribing any given mode, and without in any manner qualifying the limitations imposed by the general law. If there is any repugnance it is imperceptible.

I submit, therefore, that, even if it should be held, that under the power conferred on county courts to subscribe for stock in the T. & N. R. Co., is also embraced the power to subscribe to said company, as a trustee, for stock in a pretended

branch road, and practically independent company—that the power to issue bonds to pay for stock in the T. & N. R. Co., embraces the power to issue them to pay for stock in a pretended branch road—that the right of the county of Cass to become a stockholder in the T. & N. R. Co., and share in the profits of the business of the main line belonging to that corporation, is fully satisfied by the right to hold stock, and share in the profits of the business of a pretended branch—that this act of March 21st, 1868, was unnecessarily invoked in making the subscription, and was unnecessarily recited in the bonds—that, notwithstanding the constitutional inhibition, and the manifest non-compliance with its requirements, the bonds are valid—that they are valid, notwithstanding it *may* have been necessary to invoke the powers conferred by said act of March 21st—that they are valid notwithstanding it appears from the recitals therein that Cass county acquired by its subscription of stock, and the payment thereof by said bonds, none of the substantial and material rights secured and allowed stockholders in the T. & N. R. Co., by its charter—and that they are valid notwithstanding all these, as well as other facts affecting their validity, appear on their face, to the extent and in the manner assumed in behalf of the plaintiff in error—I submit, I say, that even if all these points *should* be so decided, the fact appearing from the recitals that a vote of the tax-payers was not taken, as required by the act of January 14th, 1860. and for the purposes therein indicated, is fatal—unless it shall be held that the provisions of the charter are absolutely inconsistent with those of said act.

A. COMINGO,

Att'y for Pl'ff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

ERROR TO THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF MISSOURI.

THE COUNTY OF CASS,
PLAINTIFF IN ERROR,

vs.

SOLOMON L. GILLET,
DEFENDANT IN ERROR.

October Term, 1879.

STATEMENT AND ARGUMENT FOR DEFENDANT IN ERROR.

T. K. SKINKER,
Counsel for the Defendant in Error.

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STATEMENT OF THE CASE FOR DEFENDANT IN ERROR.

This is a suit upon coupons of county bonds. The case was tried before judges Dillon and Krekel without a jury. There was a special finding of the facts and a judgment for the plaintiff below. The county appeals.

The special finding shows the following state of facts:

On the 16th of January, 1860, the General Assembly of Missouri, by special act, incorporated the Tebo and Neosho Railroad Company.

Laws Mo. 1859-60, p. 402.

Section 1 of this act, declares: "*That a company is hereby incorporated* to be called the Tebo and Neosho Railroad Company, the stock whereof shall be five millions of dollars, to be divided into shares of $100 each, the holders whereof, their successors or assigns, shall constitute and be a body corporate and politic in law and in fact, by the name and style aforesaid, and by that name shall have *perpetual succession* * * * and shall be able in law and equity to make contracts, etc."

Section 6 authorizes the company to survey, mark, locate, construct, maintain and operate a railroad, commencing at any point on the Pacific Railroad, between the west bank of the Lamine River and Muddy Creek, in Pettis County, thence to run in a southwesterly direction to the Kansas State line, etc.; and to extend branch railroads into and through any counties that the directors may deem advisable.

Section 8 provides that the 14th, among other sections, of the charter of the Osage Valley and Southern Kansas Railroad Company shall be applicable to the Tebo and Neosho Railroad Company, and that all the powers contained in these sections shall be extended to the latter company. This 14th section declares that "it shall be lawful for the county court of any county in which any part of the route of said railroad or branches may be, or any county adjacent thereto, to subscribe to the stock of the company * * * * * and for the stock so subscribed may issue bonds of the county to raise the funds to pay the same."

Laws Mo. 1857, [Adj. Sess.] p. 62.

On the 21st of March, 1868, the General Assembly passed an act to regulate the establishment of branch railroads and to define their relations to the parent companies. This act, entitled "an act to aid the building of branch railroads in the State of Missouri," is as follows:

SECTION 1. Any railroad company in this State authorized by law to build branches, and wishing to avail themselves of the provisions of this act, shall, by its board of directors, pass and cause to be entered upon its records, a resolution setting forth such desire and designating the name under which such branch shall be built, its point of intersection with its main line and general course, a certified copy of which resolution shall be filed with the Secretary of State, after which they shall be governed by the provisions of this act.

SEC. 2. Whenever any such railroad company shall undertake the construction of a branch designated as provided in the first section of this act, they shall receive donations or subscriptions to stock to aid in its construction, in the name of such branch, which shall be expressed in the certificate of stock issued: the costs and expenses of constructing and operating such branch shall be kept separate and distinct from expenses on the main line. They may borrow money and issue bonds secured by mortgage on such branch road to aid in its construction, and in general may operate, lease, sell, or consolidate with any connecting road, distinct and separate from their main line, and in any other way may manage, or dispose of such branch as by law they may be authorized with reference to their main line, and separate therefrom.

SEC. 3. Any branch road so constructed shall not be holden for any debt, lien or liability of the main line, nor shall the main line be holden for any debt, lien, or liability of such branch. Any dividends of profits arising out of the business of such branch road shall be divided among the stockholders in said branch, and in all respects the interest of the stockholders in the branch shall be kept separate and distinct from the interests of the stockholders in the main line.

SEC. 4. The holders of stock in any railroad company which was subscribed in aid of the construction of a branch road according to the provisions of this act, shall have the same rights as other stockholders in the company, in the choice of officers: but in all matters directly and specially affecting the interests of such branch road the stockholders in such branch shall control, and, for such purpose, the directors, under their by-laws may, or, on the petition of parties representing one-tenth of such stock, shall call a meeting of the stockholders in such branch, setting forth the object of such meeting; and at any such meeting such stockholders may instruct the board of directors in all matters relating especially to their interests, and they shall be governed by such instructions, if not inconsistent with the laws of the State and the powers of such company.

Laws Mo., 1868, p. 90.

Proceeding under section 6 of its charter and the provisions of the branch railroad act, the directory of the Tebo and Neosho R. R. Co., on the 6th of June, 1870, adopted a resolution establishing a branch, to be known as the Clinton and Kansas City branch, designating its point of intersection with the main line and its general course. A copy of this was filed with the Secretary of State. At the same time a committee was appointed to take charge of the construction of the branch, and was authorized to solicit subscriptions in the name of the company to the use of the branch.

On the 28th of February, 1871, upon the application of this committee, the county court of Cass County, by order of record, subscribed for "three thousand shares of the capital stock of the Tebo and Neosho R. R. Co. (now in part the Missouri, Kansas and Texas Railway Company), in the name of and for the use and benefit of the Clinton & Kansas City Branch of the Tebo and Neosho R. R., and to aid in the construction thereof, each share being of the denomination of $100." This is the language of the order.

The bonds from which the coupons in suit are taken, were issued in payment of this subscription. They are in the following form:

"Know all men by these presents, that the County of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company, to the use and benefit, and in the name of the Clinton and Kansas City branch of the Tebo and Neosho Railroad, in the sum of one thousand dollars, which sum the said county, for value received, hereby promises to pay to the Tebo and Neosho Railroad Company or bearer, to aid in building the said branch railroad, etc. This bond is issued under, and in pursuance of an order of the County Court of the County of Cass, in the State of Missouri, and in pursuance of and by authority of an act of the General Assembly of the State of Missouri, entitled 'An act to incorporate the Tebo and Neosho Railroad Company,' approved January 16th, 1860, and of an act of the General Assembly of the State of Missouri, entitled 'An act to aid in the building of branch railroads in the State of Missouri,' approved March 21st, A. D. 1868."

They bear date February 1st, 1871, but none of them were actually issued until August, 1871, and most of them not until later.

The court found that on the 9th of August, 1871, a temporary injunction was granted by the judge of the 6th Judicial Circuit of Missouri against the issue of the bonds, and was afterwards perpetuated. The National Park Bank, which was constituted by the order of subscription the custodian of the bonds, was not made party to this proceeding; and the bonds were delivered by the bank after the temporary injunction was granted, and the writ had been served on the county justices. This was done by the bank without any order from the county court, as required by the terms of the subscription, but the court subsequently recognized the action of the bank by providing for the payment of interest on the bonds. [See printed record, p. 50.]

The court further found that the Tebo and Neosho Railroad Company never solicited any subscription of stock from Cass County for the building of the branch road, except through the Committee of Construction; that it has never accepted, nor in any way ratified any subscription; that it never issued, nor agreed to issue, any certificates of stock to Cass County, nor has it ever received any of the bonds; nor has its successor, the Missouri, Kansas & Texas Railway ever issued any stock or received any bonds; that the branch road was never completed and the work has long since been abandoned, after grading seventeen miles of the road in Cass County.

The court further found that on the 11th of October, 1870, the Tebo and Neosho Railroad Company and the Missouri, Kansas & Texas Railway Company entered into a contract, which, omitting certain recitals, is as follows:

"The party of the first part (the Tebo & Neosho Company) doth hereby sell, convey and transfer to the party of the second part (the Missouri, Kansas & Texas

Company) all its privileges, rights, powers, franchises, real estate and other property, the whole or a part of which is in this State, excepting only such as belong to the extension of the Tebo & Neosho line north from Sedalia, *via* Boonville, Fayette and Moberly, to the railroad bridge at West Quincy, declared July 2d, 1869, &c., &c., &c., and doth consent to a merger of the same, with the franchises, property and rights of said Missouri, Kansas & Texas Company, and said Missouri, Kansas & Texas Company shall have, exercise and enjoy all the rights, powers, privileges and immunities of the original charter of the Tebo & Neosho Company, and of the several amendments thereto,in the same manner and to the same extent as has been heretofore exercised and enjoyed by the Tebo and Neosho Company, or by the several shareholders in said company, whose stock shall be exchanged as herein provided, either or both.

And the Missouri, Kansas & Texas Company does hereby accept the terms and conditions of the within instrument. And the Missouri, Kansas & Texas Company further agrees to increase its capital stock 36,575 shares, being an amount equal to the capital stock of the Tebo & Neosho Company, which has been subscribed and paid for by parties, individuals, or the several towns, cities and counties situated along *the portion of the road of said Tebo & Neosho Company so conveyed and merged*, and to issue and deliver to the holder of every share of the capital stock of said party so subscribed and paid for in good faith, or contracted to be issued as aforesaid, in exchange therefor, in accordance with the terms of the resolution of the stockholders of the Tebo & Neosho Company, passed October 11, 1870, authorizing this conveyance, one share of par value of one hundred dollars, of stock of said Missouri, Kansas & Texas Company, subject to all calls and liabilities, if any, attaching to the stock so exchanged."

SUMMARY OF PLAINTIFF'S CASE.

The Tebo and Neosho R. R. Co., being authorized by the 6th section of its charter to build branches, had the right to establish the Clinton & Kansas City branch; and the resolution establishing it having been adopted and recorded in accordance with the provisions of the branch railroad act, that branch attained a legal existence on the 6th of June, 1870. By the 14th section of the Osage Valley & Southern Kansas Railroad charter, incorporated into the charter of the Tebo and Neosho Company, it is made lawful for the county court of any county in which any part of said railroad or branches may be, to subscribe to the stock of the company. This branch was located through Cass county. Hence the county had the power to make the subscription in payment of which the bonds in suit were issued, and as the plaintiff is, according to the finding of the court, an innocent holder for value, that is sufficient to entitle him to judgment.

The defense seems to embrace four propositions:

1. That the act of January 14th, 1860, amending the general railroad law of 1855, operated a repeal of that provision of the charter of the Tebo and Neosho Company, which authorized municipal subscriptions without requiring the sanction of a popular vote.

2. That the bonds in question were not issued upon a subscription to the capital stock of the Tebo and Neosho Company, but were issued to that Company as a trustee for the Clinton and Kansas City Branch.

3. That the Tebo and Neosho Company had ceased to exist as a corporation before the subscription was made.

4. That the issuing of the bonds was enjoined by the Circuit Court of Cass County before it took place.

I.

ARGUMENT.

Were the charter powers respecting municipal subscriptions withdrawn by the act of January 14th, 1860?

This question is conclusively settled adversely to the defendant by a well-considered judgment of the Supreme Court of Missouri, which has already been followed by this court.

See Smith v. the County of Clark, 54 Mo. pp. 67 to 69, 80; construing
Rev. Stat. Mo. 1855, p. 427, §30.
Laws Mo. 1859–60, p. 88.
Laws Mo. 1860–61, p. 60.
County of Schuyler v. Thomas 98 U. S. 169, 174.

II.

Were the bonds issued upon a subscription to the capital stock of the Tebo and Neosho Company, or were they issued to that company merely as a trustee for the branch road?

The proposition underlying the objection here made is that the branch railroad act in effect put the construction and operation of every branch under the charge of a corporation distinct from that which owned the main line. The only foundation for this assertion is the fact that the act provided that the main line and the branch should be independent of each other so far as debts and liabilities were concerned, and that those who subscribed for stock to aid in the construction of the branch should look to the earnings of the branch alone for dividends, while those whose subscriptions went to the construction of the main line were to draw their dividends from the earnings of that line alone. The branch stockholders were also authorized to instruct the

board of directors in all matters peculiarly affecting their interests. On the other hand they were to have the same voice in the election of directors as other stockholders in the corporation. If a contract was to be made, there was only one name in which it could be made. If a suit was to be instituted, there was only one corporate body, by which, or against which, it could be instituted, whether the claim or liability related to the main line or to the branch. The franchises under which the main line and the branch were to be operated were conferred by the same charter, and were the same in respect to each. One board of directors was the governing power for both. One set of officers and employes operated both as one road. There is nothing in the act which made the branch road and its appurtenances any less the property of the corporation than the main line and its appurtenances. There is no attempt to divide the corporation into two parts, making a separate corporation out of each. There is no grant of new franchises. The act merely divided the stockholders into two classes, and regulated their rights and interests in the property of the corporation. It left the whole under the control of one legal head—the original corporation.

Farmers' Bank v. Garten, 34 Mo. 119.
Merchants' Bank v. Farmer, 43 Mo. 214.

If I am right in these views, then the subscription made by Cass County was not a subscription to the Tebo and Neosho company as trustee, and the bonds were not issued to that corporation as trustee. But the stock was subscribed and the bonds were issued to it in its own right. The fact that it was required by law to appropriate their proceeds to the construction of the branch does not imply a trust in the legal sense of that term, any more than if the requirement had grown out of special contract. Subscriptions upon condition that the money shall be expended within the county are familiar; but it was never suggested

that such a condition made the corporation a trustee for the part of the road lying within the county.

It is true that under the branch act the county did not acquire the same interest in the corporation as it would have acquired if that act had not existed. But that is not a matter affecting the power to subscribe. That power was given by the charter. It was given for the purpose of enabling counties to aid the construction, either of main line or branch roads, as their interests might dictate. It was neither increased nor diminished by the act of 1868. The whole scope of that act is to secure the proper appropriation of subscriptions made in aid of branch lines.

The State *ex rel.* Att'y. Gen. v. Greene Co., Ct., 54 Mo. 543.
County of Scotland v. Thomas, 94 U. S. 682, 690.
The State *ex rel.* v. Sullivan Co. Ct., 51 Mo. 522.

If the power of the legislature to pass such an act is questioned other decisions of the Supreme Court of Missouri and of this court will be found ample to sustain it.

The State *ex rel*, v. Cape Girardeau and State Line R. R. Co., 48 Mo. 468.
County of Callaway v. Foster, 93 U. S. 567.
County of Scotland v. Thomas, 94 U. S. 682.

In the first named case it was held that article II, section 3, of the Missouri constitution of 1865, reserving to the legislature the right to amend laws previously passed, was applicable to railroad charters then in force, and where an amendment was made (with the consent of the company) it was valid, notwithstanding it took the form of a special act, and other sections of the constitution prohibited the passage of such acts in any case for which provision could be made by general law. This decision was followed by this court in the above cited cases of Callaway and Scotland counties. In the latter it was said (94 U. S. p. 690):

"It would seem clear, therefore, that alterations of the charter were admissible and would not affect rights of the company untouched thereby, nor a power to subscribe to its stock previously existing."

It should be observed that the act of 1868 was not a special act amending the charter of this particular company. Its provisions were applicable to "any railroad company in this State authorized by law to build branches". (Sec. 1). Including this company, there were in 1868 not less than fifty railroad companies which had this power. This act therefore operated an amendment to the charter of each of them. Being *general* in form it avoids the serious question raised in each of the above cited cases, viz: whether the amendment could be effected by *special* act.

III.

Had the Tebo and Neosho R. R. Company ceased to exist before the subscription was made; and if so, how does that affect the plaintiff's rights?

The defendant insists that the contract of October 11th, 1870, operated a merger of this company in the Missouri, Kansas & Texas Company, as of that date. Our answer is:

1st. There was, in point of fact, no merger.

2d. If there was a merger, the plaintiff was not affected with or bound to take notice of it.

3d. As against the plaintiff, a *bona fide* holder, the defendant is estopped to make this defense.

1. The deed of sale declares that the Tebo and Neosho company "doth hereby sell, convey and transfer to the Missouri, Kansas and Texas company all its privileges, rights, powers, franchises, real estate and other property, the whole or a part of which is in this State, *excepting only such as belong to the extension of the Tebo and Neosho line north from Sedalia, via Boonville, Fayette and Moberly to the railroad bridge at West Quincy*, * * * and doth

consent to a merger of the same with the franchises, property and rights of said Missouri, Kansas and Texas company."

At another place it is provided that the Missouri Kansas and Texas Company shall issue stock in lieu of that in the Tebo and Neosho held by individuals, and by the several towns, cities and counties situated "*along the portion of the road of the Tebo and Neosho Company so conveyed and merged.*"

No consolidation or merger of the corporations is expressly declared, but the defendant seeks to have it inferred as matter of law from the supposed fact that the Tebo and Neosho Company parted with all it had or could own.

The consent to a merger expressed by the instrument is not a consent that the corporate existence of the one company shall be merged in that of the other, but that the property and franchises conveyed shall be merged with the property and franchises of the Missouri, Kansas and Texas Company. The franchises which passed, are such as applied to the part of the road conveyed.

Tomlinson v. Branch, 15 Wall. 465.

The subsequent reference to the "portion of the road so conveyed and merged" indicates distinctly the extent of the merger intended. That there was no intention to convey the whole of the property, franchise, etc., of the Tebo and Neosho Company, seems too plain for argument.

This contract was before the court in *County of Henry v. Nicolay*, 95 U. S. 619. At p. 626, Mr. Justice Bradley, speaking for the court, says: "So far as appears the Tebo and Neosho Company did not cease to exist. In the deed of sale it expressly reserves a very material portion of its franchises; namely, all those belonging to the extension of the Tebo and Neosho line, north from Sedalia *via* Boonville, Fayette and Moberly to the railroad bridge at West Quincy."

Nothing different appears in this case, or could appear, for the deed tells the whole story. It left the Tebo and Neosho Company in the actual possession and enjoyment of all its franchises, and fast prosecuting to completion what has since become one of the main arteries of commerce of the State.

2. The fact that the deed of sale was recorded in the office of the Secretary of State of Missouri did not affect the plaintiff with notice. Constructive notice is a creature of statute; and no statute of the State gives that effect to such a record. The statute merely provides for obtaining the assent of the stockholders before a sale is made and requires that a certificate of their assent, signed by the president and secretary of the company, be filed in the office of the Secretary of State.

Wag. Stat. 315, § 57.

There is nothing corresponding with the provision of the statute of conveyances which makes the record of an ordinary deed to real estate in the recorder's office of the county notice to the world of the contents of the deed. The exigencies of business have never demanded that such provision be made. The whole object of the act is to place within the reach of the public the evidence of such transfers and the stockholders' consent.

It can not be maintained that the records of the Secretary's office are of such dignity that the world must take notice of them without statutory requirement. The only records in that office of whose contents all are bound to take notice are the original rolls of the acts of the General Assembly. All must take notice of them and their contents; not, however, because they are recorded there, but because they are the highest evidence of the law of the land. So far as the other records and documents in that office are concerned, there is no more reason for holding that they impart notice to the world than for giving that effect to the

records in the office of the Auditor, Treasurer or Register of lands. They are all alike bureaus for the transaction of the administrative business of the State government, and are all of equal dignity. No one ever heard of a record from either of these offices being held to impart constructive notice, unless in a particular case some statute may have given it that effect.

3. The defendant is estopped to say that the Tebo and Neosho Company ceased to exist as a corporation, or parted with its right to receive subscriptions to the Clinton and Kansas City branch, before this subscription was made. If true, these things would constitute no defense as against a *bona fide* holder of the bonds. It is admitted that the Tebo and Neosho Company was once a corporation. If it had ceased to be such, it was by no act of which the plaintiff had knowledge or, as we contend, was bound to take notice.

It is too well settled to require the citation of authorities, that if the bond recites the law, and the law authorizes the issue of such a bond, that is all the purchaser is bound to know. In the present case, if Mr. Gillet looked to the law, he found words creating a corporation *in praesenti*. "A corporation is hereby incorporated," says section one. He found also a power to subscribe expressly conferred upon the counties. Until the law was changed, he had a right to presume the continued existence of this power, and the same right to suppose that the corporation was still in being. No change was ever made until after this subscription, when by the act of January 30th, 1872, the section conferring the power to subscribe was repealed.

Laws Mo. 1872, p. 78, § 1.

The case seems to come fully within the principle of those in which this court has held, that the bondholder may safely rest upon the declarations of the tribunal issuing the bonds as to all matters of fact which it was the duty of that body to investigate, and determine in advance. Whether

the corporation to which it was about to subscribe, still existed or had recently become extinct, whether it retained its right to receive subscriptions or had parted with it, were certainly subjects upon which it was the especial duty of the county court to inform itself.

It has been held that where the right to subscribe is coupled with the requirement of a popular vote, a petition of tax-payers, or a limitation upon the amount of the subscription, or the proportion it may bear to the taxable values of the county, the court must first ascertain that the condition has been complied with. It would certainly be an extraordinary rule which would hold them bound to inquire into such matters as these, and yet not bound to make any inquiry as to the prime fact—the existence of the corporation—the fact without which there can be no authority and no justification for incurring the debt.

When the Cass County court was considering the petition of the Committee of Construction for a subscription, we insist that the first question which it was called upon to investigate and determine was whether there was such a corporation in existence as the Tebo and Neosho company. Bonds were issued reciting an indebtedness to and promising to pay that company, and invoking its charter as the authority for imposing the debt upon the county. It would seem that there could not be a plainer declaration that the corporation existed, short of an express statement, and that is not necessary. When we come to examine the records, we find evidence that, in point of fact, inquiry was made into this subject and a determination was reached; for the order of February 28th recites that the Tebo and Neosho is "*now in part the Missouri, Kansas & Texas company.*"

Town of Venice v. Murdock, 92 U. S. 494.
Town of Coloma v. Eaves, 92 U. S. 484.
Humboldt Township v. Long, 92 U. S. 642.
Knox Co. v. Aspinwall, 21 How. 544.

The case also comes within the principle of those which decide that where a party has executed an obligation to a corporation as such, he can not, when sued upon the obligation deny the corporate existence.

Macon County v. Shores, 97 U. S. 77.
Commissioners, etc., v. Bolles, 94 U. S. 104.
Hamtramck v. Bank of Edwardsville, 2 Mo. 169.
O. & M. R. R. Co. v. McPherson, 35 Mo. 13.
Camp v. Byrne, 41 Mo. 525.
Farmers, etc., Ins. Co. v. Needles, 52 Mo. 18.
Washburn v. Cass Co., 3 Dillon C. C. 261.
Aller v. Town of Cameron, 3 Dillon C. C. 198.
Farmers Bank v. Garten, 34 Mo. 119.
Keyser v. Trustees of Bremen, 16 Mo. 88.

IV.

The defense of *lis pendens* is fully disposed of by former adjudications of this court.

County of Warren v. Marcy, 97 U. S. 105.
City of Lexington v. Butler, 14 Wall. 283.

See also:

Durant v. Iowa County, 1 Woolw. 69.
Winston v. Westfeldt, 22 Ala. 760.
Kiefer v. Ehler, 18 Pa. St. 388.
Stone v. Elliott, 11 Ohio St. 252.
Mims v. West, 38 Ga. 18.
Leitch v. Wells, 48 N. Y. 585.

Besides, the National Park Bank, in whose custody the bonds were lodged in escrow, was not a party to the suit.

Respectfully submitted,

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